

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA :
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: : **FINAL JURY CHARGE**
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: :
-against- : **1:20-cr-390 (ENV)**
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: :
JAVIER AGUILAR, :
: :
: :
: : **Defendant.x**

VITALIANO, D.J.

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I. GENERAL RULES

PRELIMINARY INSTRUCTIONS

**MEMBERS OF THE JURY, NOW THAT THE EVIDENCE IN
THIS CASE HAS BEEN PRESENTED AND THE ATTORNEYS
FOR THE GOVERNMENT AND THE DEFENDANT HAVE
CONCLUDED THEIR CLOSING ARGUMENTS, IT IS MY
RESPONSIBILITY TO INSTRUCT YOU AS TO THE LAW THAT
GOVERNS THIS CASE. BEFORE I DO SO, I WANT TO THANK
YOU FOR YOUR PATIENCE AND COOPERATION.**

MY INSTRUCTIONS WILL BE IN THREE PARTS:

**FIRST: I WILL INSTRUCT YOU REGARDING THE
GENERAL RULES THAT DEFINE AND GOVERN THE DUTIES
OF A JURY IN A CRIMINAL CASE;**

SECOND: I WILL INSTRUCT YOU AS TO THE LEGAL

**ELEMENTS OF THE CRIMES CHARGED IN THE
INDICTMENT—THAT IS, THE SPECIFIC ELEMENTS THAT
THE GOVERNMENT MUST PROVE BEYOND A REASONABLE
DOUBT TO WARRANT A FINDING OF GUILT; AND
THIRD: I WILL GIVE YOU SOME GENERAL RULES
REGARDING YOUR DELIBERATIONS.**

THE DUTIES OF THE JURY

**BY WAY OF A REFRESHER, YOU HAVE NOW HEARD
ALL OF THE EVIDENCE IN THE CASE, AS WELL AS THE
FINAL ARGUMENTS OF THE LAWYERS FOR THE PARTIES.**

**IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE
EVIDENCE IN THIS CASE. YOU ARE THE SOLE JUDGES OF
THE FACTS, AND IT IS, THEREFORE, FOR YOU AND YOU
ALONE TO PASS UPON THE WEIGHT OF THE EVIDENCE, TO
RESOLVE SUCH CONFLICTS AS MAY HAVE APPEARED IN
THE EVIDENCE, AND TO DRAW SUCH INFERENCES AS YOU
DEEM TO BE REASONABLE AND WARRANTED FROM THE
EVIDENCE OR LACK OF EVIDENCE IN THIS CASE.**

**WITH RESPECT TO ANY QUESTION CONCERNING THE
FACTS, IT IS YOUR RECOLLECTION OF THE EVIDENCE**

THAT CONTROLS.

**TO THE FACTS AS YOU FIND THEM, YOU MUST APPLY
THE LAW IN ACCORDANCE WITH MY INSTRUCTIONS.
WHILE THE LAWYERS MAY HAVE COMMENTED ON SOME
OF THESE LEGAL RULES, YOU MUST BE GUIDED ONLY BY
WHAT I INSTRUCT YOU ABOUT THEM. YOU MUST FOLLOW
ALL THE RULES AS I EXPLAIN THEM TO YOU. YOU MAY
NOT FOLLOW SOME AND IGNORE OTHERS; EVEN IF YOU
DISAGREE WITH OR DO NOT UNDERSTAND THE REASONS
FOR SOME OF THE RULES, YOU ARE BOUND TO FOLLOW
THEM.**

**I EXPRESS NO VIEW WHETHER THE DEFENDANT IS
GUILTY OR NOT GUILTY OR AS TO ANY FACT. YOU**

**SHOULD NOT DRAW ANY INFERENCE OR REACH ANY
CONCLUSION AS TO WHETHER THE DEFENDANT IS
GUILTY OR NOT GUILTY FROM ANYTHING I MAY HAVE
SAID OR DONE. YOU WILL DECIDE THE CASE SOLELY ON
THE FACTS YOU FIND AND THE LAW AS I GIVE IT TO YOU.**

PARTIES ARE EQUAL BEFORE THE COURT

IN REACHING YOUR VERDICT, YOU ARE TO PERFORM

THE DUTY OF FINDING THE FACTS WITHOUT BIAS OR

PREJUDICE AS TO ANY PARTY. YOU MUST REMEMBER

THAT ALL PARTIES STAND EQUAL BEFORE A JURY IN THE

COURTS OF THE UNITED STATES. THE FACT THAT THE

GOVERNMENT IS A PARTY AND THE PROSECUTION IS

BROUGHT IN THE NAME OF THE UNITED STATES DOES NOT

ENTITLE THE GOVERNMENT OR ITS WITNESSES TO ANY

GREATER CONSIDERATION THAN THAT ACCORDED TO

ANY DEFENDANT. BY THE SAME TOKEN, YOU MUST GIVE

IT NO LESS CONSIDERATION. YOUR VERDICT MUST BE

BASED SOLELY ON THE EVIDENCE OR LACK OF EVIDENCE.

FOR THE SAME REASONS, THE PERSONALITIES AND

THE CONDUCT OF COUNSEL ARE NOT IN ANY WAY IN ISSUE. IF YOU FORMED REACTIONS OF ANY KIND TO ANY OF THE LAWYERS IN THE CASE, FAVORABLE OR UNFAVORABLE, WHETHER YOU APPROVED OR DISAPPROVED OF THEIR BEHAVIOR, THOSE REACTIONS MUST NOT ENTER INTO YOUR DELIBERATIONS.

DURING THE COURSE OF THE TRIAL, I MAY HAVE ADMONISHED AN ATTORNEY. YOU SHOULD DRAW NO INFERENCE AGAINST THE ATTORNEY OR THE CLIENT. IT IS THE DUTY OF THE ATTORNEYS TO OFFER EVIDENCE AND PRESS OBJECTIONS ON BEHALF OF THEIR SIDE. IT IS MY FUNCTION TO CUT OFF COUNSEL FROM AN IMPROPER LINE OF ARGUMENT OR QUESTIONING AND TO STRIKE

**ANSWERS WHEN I THINK IT IS NECESSARY. BUT YOU
SHOULD DRAW NO INFERENCE FROM THAT.**

PRESUMPTION OF INNOCENCE

THE INDICTMENT THAT WAS FILED AGAINST THE DEFENDANT IS THE MEANS BY WHICH THE GOVERNMENT GIVES HIM NOTICE OF THE CHARGES AGAINST HIM AND BRINGS HIM BEFORE THE COURT. THE INDICTMENT IS AN ACCUSATION AND NOTHING MORE. THE INDICTMENT IS NOT EVIDENCE, AND YOU ARE TO GIVE IT NO WEIGHT IN ARRIVING AT YOUR VERDICT.

THE DEFENDANT, IN RESPONSE TO THE INDICTMENT, PLEADED "NOT GUILTY." THE DEFENDANT IS PRESUMED TO BE INNOCENT UNLESS HIS GUILT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT, AND THAT PRESUMPTION ALONE, UNLESS OVERCOME, IS SUFFICIENT TO ACQUIT HIM. THE DEFENDANT IS ON TRIAL FOR THE CRIMES

**CHARGED AGAINST HIM IN THE INDICTMENT AND NOT
FOR ANYTHING ELSE.**

BURDEN OF PROOF

THE GOVERNMENT HAS THE BURDEN—THAT IS, THE OBLIGATION—OF PROVING GUILT BEYOND A REASONABLE DOUBT. THIS BURDEN NEVER SHIFTS TO THE DEFENDANT. THE DEFENDANT DOES NOT HAVE TO PROVE HIS INNOCENCE; HE NEED NOT SUBMIT ANY EVIDENCE AT ALL. AND EVEN IF THE DEFENDANT HAS SUBMITTED EVIDENCE, AS HE DID DURING THIS TRIAL, THE BURDEN OF PROOF NEVER SHIFTS TO THE DEFENDANT. IT ALWAYS STAYS WITH THE GOVERNMENT.

REASONABLE DOUBT

**SINCE, IN ORDER TO CONVICT THE DEFENDANT OF A
GIVEN CHARGE, THE GOVERNMENT IS REQUIRED TO
PROVE THAT CHARGE BEYOND A REASONABLE DOUBT,
THE QUESTION THEN IS: WHAT IS REASONABLE DOUBT?**

**THE WORDS ALMOST DEFINE THEMSELVES. IT IS A
DOUBT BASED UPON REASON. IT IS A DOUBT THAT A
REASONABLE PERSON HAS AFTER CAREFULLY WEIGHING
ALL OF THE EVIDENCE OR LACK OF EVIDENCE. IT IS A
DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
HESITATE TO ACT IN A MATTER OF IMPORTANCE IN HIS
OR HER PERSONAL LIFE. PROOF BEYOND A REASONABLE
DOUBT MUST, THEREFORE, BE PROOF OF A CONVINCING
CHARACTER THAT A REASONABLE PERSON WOULD NOT**

HESITATE TO RELY UPON IN MAKING AN IMPORTANT DECISION.

A REASONABLE DOUBT IS NOT CAPRICE OR WHIM. IT IS NOT SPECULATION OR SUSPICION. IT IS NOT AN EXCUSE TO AVOID THE PERFORMANCE OF AN UNPLEASANT DUTY. THE LAW DOES NOT REQUIRE THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT: PROOF BEYOND A REASONABLE DOUBT IS SUFFICIENT TO CONVICT. BUT BEAR IN MIND THAT A CRIMINAL CASE IS DIFFERENT FROM A CIVIL CASE.

IF, AFTER FAIR AND IMPARTIAL CONSIDERATION OF THE EVIDENCE, YOU HAVE A REASONABLE DOUBT AS TO THE DEFENDANT'S GUILT WITH RESPECT TO A

**PARTICULAR CHARGE AGAINST HIM, YOU MUST FIND THE
DEFENDANT NOT GUILTY OF THAT CHARGE. ON THE
OTHER HAND, IF AFTER FAIR AND IMPARTIAL
CONSIDERATION OF ALL THE EVIDENCE, YOU ARE
SATISFIED BEYOND A REASONABLE DOUBT OF THE
DEFENDANT'S GUILT WITH RESPECT TO A PARTICULAR
CHARGE AGAINST HIM, YOU MUST FIND THE DEFENDANT
GUILTY OF THAT CHARGE.**

EVIDENCE GENERALLY

**I WISH TO EXPAND NOW ON THE INSTRUCTIONS I
GAVE YOU AT THE BEGINNING OF THE TRIAL AS TO WHAT
IS EVIDENCE AND HOW YOU SHOULD CONSIDER IT.
EVIDENCE COMES IN SEVERAL FORMS, INCLUDING:**

- A. SWORN TESTIMONY OF WITNESSES, BOTH ON
DIRECT AND CROSS-EXAMINATION, AND REGARDLESS OF
WHO CALLED THE WITNESS;**
- B. EXHIBITS THAT HAVE BEEN RECEIVED IN
EVIDENCE BY THE COURT; AND**
- C. FACTS TO WHICH ALL THE LAWYERS HAVE
AGREED OR STIPULATED.**

STIPULATIONS

**THE PARTIES HAVE STIPULATED TO CERTAIN FACTS
IN THIS CASE. SUCH A STIPULATION IS AN AGREEMENT
AMONG THE PARTIES THAT A CERTAIN FACT IS TRUE.
YOU MUST CONSIDER SUCH STIPULATED FACTS AS TRUE.**

WHAT IS NOT EVIDENCE

AS I SAID AT THE BEGINNING OF THE TRIAL, CERTAIN THINGS ARE NOT EVIDENCE AND ARE TO BE DISREGARDED BY YOU IN DECIDING WHAT THE FACTS ARE. THEY ARE AS FOLLOWS:

FIRST, ARGUMENTS OR STATEMENTS BY LAWYERS ARE NOT EVIDENCE.

QUESTIONS PUT TO THE WITNESSES ARE NOT EVIDENCE. IT IS THE QUESTION COMBINED WITH THE ANSWER THAT IS EVIDENCE.

IN ADDITION TO THE LAWYERS' QUESTIONS, I OCCASIONALLY MAY HAVE ASKED QUESTIONS FOR PURPOSES OF CLARIFICATION. PLEASE DO NOT ASSUME THAT THE QUESTIONS ARE EVIDENCE OR THAT I HOLD

ANY OPINION ON THE MATTERS TO WHICH ANY QUESTIONS MAY HAVE RELATED. I DO NOT. THOSE QUESTIONS WERE ASKED SOLELY IN AN EFFORT OR ATTEMPT TO MAKE SOMETHING CLEARER.

SIMILARLY, OBJECTIONS TO QUESTIONS OR TO OFFERED EXHIBITS ARE NOT EVIDENCE. IN THIS REGARD, ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY BELIEVE EVIDENCE SHOULD NOT BE RECEIVED. YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR BY THE COURT'S RULING ON IT. IF THE OBJECTION WAS SUSTAINED, IGNORE THE QUESTION. IF THE OBJECTION WAS OVERRULED, TREAT THE ANSWER LIKE ANY OTHER ANSWER.

**OF COURSE, TESTIMONY THAT HAS BEEN STRICKEN
OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD IS
NOT EVIDENCE AND MUST BE DISREGARDED.**

**EQUALLY OBVIOUS, ANYTHING YOU MAY HAVE SEEN
OR HEARD OUTSIDE THE COURTROOM IS NOT EVIDENCE.**

**FINALLY, IT WOULD BE IMPROPER FOR YOU TO
CONSIDER, IN REACHING YOUR DECISION AS TO
WHETHER THE GOVERNMENT SUSTAINED ITS BURDEN OF
PROOF, ANY PERSONAL FEELINGS YOU MAY HAVE ABOUT
THE DEFENDANT'S RACE, RELIGION, NATIONAL ORIGIN,
ETHNIC BACKGROUND, SEX, SEXUAL ORIENTATION, OR
AGE. ALL PERSONS ARE ENTITLED TO THE PRESUMPTION
OF INNOCENCE, AND THE GOVERNMENT HAS THE SAME**

**BURDEN OF PROOF. IN ADDITION, IT WOULD BE EQUALLY
IMPROPER FOR YOU TO ALLOW ANY FEELINGS YOU
MIGHT HAVE ABOUT THE GOVERNMENT OF THE UNITED
STATES OR THE NATURE OF THE CRIME CHARGED TO
INTERFERE WITH YOUR DECISIONMAKING PROCESS.**

**TO REPEAT, YOUR VERDICT MUST BE BASED
EXCLUSIVELY UPON THE EVIDENCE OR THE LACK OF
EVIDENCE IN THE CASE.**

AUDIO AND VIDEO RECORDINGS AND TRANSCRIPTS

THE GOVERNMENT HAS OFFERED EVIDENCE IN THE FORM OF RECORDINGS, IN SPANISH, OF TELEPHONE CALLS AND ONE VIDEO RECORDING. THESE CALLS AND MEETING WERE LAWFULLY RECORDED.

BEFORE THE RECORDINGS WERE PLAYED, YOU WERE EACH GIVEN A TRANSCRIPT WITH AN ENGLISH TRANSLATION OF THE RECORDING. I ADVISED YOU THAT ALTHOUGH SOME OF YOU MAY KNOW SPANISH, IT IS IMPORTANT THAT ALL JURORS CONSIDER THE SAME EVIDENCE. THEREFORE, IF YOU SPEAK SPANISH AND YOU PERCEIVE SOME DIFFERENCE BETWEEN WHAT YOU HEARD ON THE RECORDING AND WHAT APPEARS IN THE TRANSCRIPT, YOU MAY NOT RETRANSLATE IT FOR

**YOURSELF OR FOR THE OTHER JURORS. YOU MUST
ACCEPT THE ENGLISH TRANSLATION CONTAINED IN THE
TRANSCRIPT AND DISREGARD ANY DIFFERENT MEANING.**

DIRECT AND CIRCUMSTANTIAL EVIDENCE

I TOLD YOU THAT EVIDENCE COMES IN VARIOUS FORMS SUCH AS THE SWORN TESTIMONY OF WITNESSES, EXHIBITS, AND STIPULATIONS.

THERE ARE, IN ADDITION, TWO DIFFERENT KINDS OF EVIDENCE—DIRECT AND CIRCUMSTANTIAL.

DIRECT EVIDENCE IS THE COMMUNICATION OF A FACT BY A WITNESS, WHO TESTIFIED TO THE KNOWLEDGE OF THAT FACT AS HAVING BEEN OBTAINED THROUGH ONE OF THE FIVE SENSES. SO, FOR EXAMPLE, A WITNESS WHO TESTIFIED TO KNOWLEDGE OF A FACT BECAUSE HE SAW IT, HEARD IT, SMELLED IT, TASTED IT, OR TOUCHED IT IS GIVING EVIDENCE WHICH IS DIRECT. WHAT REMAINS IS YOUR RESPONSIBILITY TO PASS UPON

**THE CREDIBILITY OF THE TESTIMONY THAT WITNESS
GAVE.**

**CIRCUMSTANTIAL EVIDENCE IS EVIDENCE WHICH
TENDS TO PROVE A FACT IN ISSUE BY PROOF OF OTHER
FACTS FROM WHICH THE FACT IN ISSUE MAY BE
INFERRED.**

**THE WORD "INFER"—OR THE EXPRESSION "TO DRAW
AN INFERENCE"—MEANS TO FIND THAT A FACT EXISTS
FROM PROOF OF ANOTHER FACT. FOR EXAMPLE, IF A
FACT IN ISSUE IS WHETHER IT IS RAINING AT THE
MOMENT, NONE OF US CAN TESTIFY DIRECTLY TO THAT
FACT SITTING AS WE ARE IN WHAT IS AN ESSENTIALLY
WINDOWLESS COURTROOM. ASSUME, HOWEVER, THAT**

AS WE ARE SITTING HERE, A PERSON WALKS INTO THE COURTROOM WEARING A RAINCOAT THAT IS DRIPPING WET AND CARRYING AN UMBRELLA THAT IS DRIPPING WATER. WE MAY INFER FROM THOSE FACTS THAT IT IS RAINING OUTSIDE. IN OTHER WORDS, THE FACT OF RAIN IS AN INFERENCE THAT COULD BE DRAWN FROM THE WET RAINCOAT AND THE DRIPPING UMBRELLA.

HOWEVER, FROM THE DIRECT EVIDENCE OF YOUR OBSERVATION OF A PERSON ENTERING THE COURTROOM WEARING A WET RAINCOAT AND CARRYING A WET UMBRELLA ALONE, YOU COULD NOT INFER EXACTLY WHEN THE RAIN HAD STARTED OR FOR HOW LONG IT HAD RAINED.

AN INFERENCE IS TO BE DRAWN ONLY IF IT IS LOGICAL AND REASONABLE TO DO SO. IN DECIDING WHETHER TO DRAW AN INFERENCE, YOU MUST LOOK AT AND CONSIDER ALL THE FACTS IN THE LIGHT OF REASON, COMMON SENSE, AND EXPERIENCE. WHETHER A GIVEN INFERENCE IS OR IS NOT TO BE DRAWN IS ENTIRELY A MATTER FOR YOU, THE JURY, TO DECIDE. PLEASE BEAR IN MIND, HOWEVER, THAT AN INFERENCE IS NOT TO BE DRAWN BY GUESSWORK OR SPECULATION.

I REMIND YOU ONCE AGAIN THAT YOU MAY NOT CONVICT THE DEFENDANT UNLESS YOU ARE SATISFIED OF HIS GUILT BEYOND A REASONABLE DOUBT, WHETHER BASED ON DIRECT EVIDENCE, CIRCUMSTANTIAL

**EVIDENCE, OR THE LOGICAL INFERENCES TO BE DRAWN
FROM SUCH EVIDENCE.**

**CIRCUMSTANTIAL EVIDENCE DOES NOT
NECESSARILY PROVE LESS THAN DIRECT EVIDENCE, NOR
DOES IT NECESSARILY PROVE MORE. YOU ARE TO
CONSIDER ALL THE EVIDENCE IN THE CASE, DIRECT AND
CIRCUMSTANTIAL, IN DETERMINING WHAT THE FACTS
ARE AND IN ARRIVING AT YOUR VERDICT.**

INFERENCES

I WILL NOW INSTRUCT YOU FURTHER ABOUT INFERENCES. DURING THE TRIAL, YOU MAY HAVE HEARD THE ATTORNEYS USE THE TERM "INFERENCE," AND IN THEIR ARGUMENTS THEY MAY HAVE ASKED YOU TO INFER, ON THE BASIS OF YOUR REASON, EXPERIENCE AND COMMON SENSE, FROM ONE OR MORE PROVEN FACTS, THE EXISTENCE OF SOME OTHER FACTS.

AN INFERENCE IS NOT A SUSPICION OR A GUESS. IT IS A LOGICAL CONCLUSION THAT A DISPUTED FACT EXISTS THAT WE REACH IN LIGHT OF ANOTHER FACT WHICH HAS BEEN SHOWN TO EXIST. THERE ARE TIMES WHEN DIFFERENT INFERENCES MAY BE DRAWN FROM FACTS, WHETHER PROVED BY DIRECT OR

**CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU, AND YOU
ALONE, TO DECIDE WHAT INFERENCES YOU WILL DRAW.
KEEP IN MIND THAT THE MERE EXISTENCE OF AN
INFERENCE AGAINST THE DEFENDANT DOES NOT
RELIEVE THE GOVERNMENT OF THE BURDEN OF
ESTABLISHING ITS CASE BEYOND A REASONABLE DOUBT.**

IMPERMISSIBLE TO INFER GUILT FROM

ASSOCIATION

IN CONSIDERING INFERENCES, KEEP IN MIND THAT

YOU MAY NOT INFER THAT A DEFENDANT IS GUILTY OF

CRIMINAL CONDUCT MERELY FROM THE FACT THAT HE

ASSOCIATED WITH OTHER PEOPLE WHO WERE GUILTY OF

WRONGDOING, OR THAT HE WAS PRESENT AT THE TIME

THAT CRIMINAL CONDUCT WAS BEING COMMITTED, OR

THAT HE HAD KNOWLEDGE THAT IT WAS BEING

COMMITTED.

NUMBER OF WITNESSES AND UNCONTRADICTED

TESTIMONY

**THE FACT THAT ONE SIDE OR THE OTHER CALLED
MORE WITNESSES OR INTRODUCED MORE EVIDENCE
DOES NOT MEAN THAT YOU SHOULD FIND THE FACTS IN
FAVOR OF THE SIDE WHO CALLED MORE WITNESSES. YOU
MUST NOT PERMIT THE NUMBER OF WITNESSES OR
DOCUMENTS SUPPLIED OR THE AMOUNT OF TIME TAKEN
IN EXAMINING A WITNESS TO OVERWHELM YOUR
JUDGMENT. THE WEIGHT OF THE EVIDENCE IS BY NO
MEANS DETERMINED BY THE NUMBER OF WITNESSES OR
THE LENGTH OF THEIR TESTIMONY OR THE QUANTITY OF
DOCUMENTS. YOU MUST KEEP IN MIND THAT THE
BURDEN OF PROOF IS ALWAYS ON THE GOVERNMENT AND**

**THE DEFENDANT IS NOT REQUIRED TO CALL ANY
WITNESS OR OFFER ANY EVIDENCE BECAUSE THE
DEFENDANT IS PRESUMED TO BE INNOCENT.**

**BY THE SAME TOKEN, YOU DO NOT HAVE TO ACCEPT
THE TESTIMONY OF ANY WITNESS WHO HAS NOT BEEN
CONTRADICTED OR IMPEACHED IF YOU FIND THE
WITNESS NOT TO BE CREDIBLE. YOU ALSO HAVE TO
DECIDE WHICH WITNESSES TO BELIEVE AND WHICH
FACTS ARE TRUE. TO DO THIS, YOU MUST LOOK AT ALL
THE EVIDENCE, DRAWING UPON YOUR OWN COMMON
SENSE AND PERSONAL EXPERIENCE. BUT, AGAIN, YOU
MUST KEEP IN MIND THAT THE BURDEN OF PROOF IS
ALWAYS ON THE GOVERNMENT AND THE DEFENDANT IS**

**NOT REQUIRED TO CALL ANY WITNESSES OR OFFER ANY
EVIDENCE BECAUSE HE IS PRESUMED TO BE INNOCENT.**

ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

THE LAW DOES NOT REQUIRE ANY PARTY TO CALL AS

WITNESSES ALL PERSONS WHO MAY HAVE BEEN PRESENT

AT ANY TIME OR PLACE INVOLVED IN THE CASE, OR WHO

MAY APPEAR TO HAVE SOME KNOWLEDGE OF THE

MATTER IN ISSUE AT THIS TRIAL. NOR DOES THE LAW

REQUIRE ANY PARTY TO PRODUCE AS EXHIBITS ALL

PAPERS AND THINGS MENTIONED DURING THE COURSE

OF THE TRIAL. AND, OF COURSE, THE DEFENDANT IN A

CRIMINAL CASE IS NOT REQUIRED TO CALL ANY

WITNESSES OR PRODUCE ANY EVIDENCE AT ALL.

INTERVIEWED WITNESSES

DURING THE COURSE OF TRIAL, YOU HEARD TESTIMONY THAT ATTORNEYS INTERVIEWED WITNESSES WHEN PREPARING FOR AND DURING THE TRIAL. YOU MUST NOT DRAW ANY UNFAVORABLE INFERENCE FROM THAT FACT.

ON THE CONTRARY, ATTORNEYS ARE OBLIGED TO PREPARE THEIR CASE AS THOROUGHLY AS POSSIBLE, AND IN THE DISCHARGE OF THAT RESPONSIBILITY, PROPERLY INTERVIEW WITNESSES IN PREPARATION FOR THE TRIAL AND FROM TIME TO TIME AS MAY BE REQUIRED DURING THE COURSE OF TRIAL.

SPECIFIC INVESTIGATIVE TECHNIQUES NOT
REQUIRED
DURING THE TRIAL YOU HAVE HEARD ARGUMENT BY
COUNSEL THAT THE GOVERNMENT DID NOT UTILIZE
SPECIFIC INVESTIGATIVE TECHNIQUES OR
EXHAUSTIVELY PURSUE EVERY PIECE OF INFORMATION.
YOU MAY CONSIDER THESE FACTS IN DECIDING
WHETHER THE GOVERNMENT HAS MET ITS BURDEN OF
PROOF, BECAUSE, AS I TOLD YOU, YOU SHOULD LOOK AT
ALL OF THE EVIDENCE OR LACK OF EVIDENCE IN
DECIDING WHETHER THE GOVERNMENT HAS PROVEN A
PARTICULAR CHARGE BEYOND A REASONABLE DOUBT.

**HOWEVER, YOU ARE ALSO INSTRUCTED THAT THERE
IS NO LEGAL REQUIREMENT THAT THE GOVERNMENT USE
ANY SPECIFIC INVESTIGATIVE TECHNIQUES OR PURSUE
EVERY INVESTIGATIVE LEAD TO PROVE ITS CASE. LAW
ENFORCEMENT TECHNIQUES ARE NOT YOUR CONCERN.
YOUR CONCERN IS TO DETERMINE WHETHER OR NOT,
BASED UPON ALL THE EVIDENCE PRESENTED IN THE
CASE, THE GOVERNMENT HAS PROVEN THAT THE
DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT.**

GUILTY PLEAS OF OTHER INDIVIDUALS

YOU HAVE HEARD TESTIMONY FROM WITNESSES WHO PLEADED GUILTY TO CHARGES ARISING OUT OF THE SAME FACTS AS THIS CASE. YOU ARE INSTRUCTED THAT YOU ARE TO DRAW NO CONCLUSIONS OR INFERENCES OF ANY KIND ABOUT THE GUILT OF THE DEFENDANT ON TRIAL FROM THE FACT THAT ANOTHER INDIVIDUAL PLEADED GUILTY TO SIMILAR CHARGES. THE DECISION TO PLEAD GUILTY WAS A PERSONAL DECISION ABOUT THAT INDIVIDUAL'S OWN GUILT. THE DECISION MAY NOT BE USED BY YOU IN ANY WAY AS EVIDENCE AGAINST THE DEFENDANT ON TRIAL.

COOPERATING WITNESSES

IN THE ATTORNEYS' OPENING AND CLOSING ARGUMENTS, MUCH WAS SAID ABOUT THE SO-CALLED "COOPERATING WITNESS" AND ABOUT WHETHER OR NOT YOU SHOULD BELIEVE HIM. THE GOVERNMENT ARGUES, AS IT IS PERMITTED TO DO, THAT IT MUST TAKE THE WITNESSES AS IT FINDS THEM. IT ARGUES THAT ONLY PEOPLE WHO THEMSELVES TAKE PART IN CRIMINAL ACTIVITY HAVE THE KNOWLEDGE REQUIRED TO SHOW CRIMINAL BEHAVIOR BY OTHERS. FOR THOSE VERY REASONS, THE LAW Allows THE USE OF ACCOMPLICE AND CO-CONSPIRATOR TESTIMONY. INDEED, IT IS THE LAW IN FEDERAL COURTS THAT THE TESTIMONY OF A SINGLE ACCOMPLICE OR CO-CONSPIRATOR MAY BE

ENOUGH IN AND OF ITSELF TO SUSTAIN A CONVICTION, IF

THE JURY FINDS THAT THE TESTIMONY ESTABLISHES

GUILT BEYOND A REASONABLE DOUBT.

HOWEVER, IT IS ALSO THE CASE THAT COOPERATOR

TESTIMONY IS OF SUCH A NATURE THAT IT MUST BE

SCRUTINIZED WITH GREAT CARE AND VIEWED WITH

PARTICULAR CAUTION WHEN YOU DECIDE HOW MUCH OF

THAT TESTIMONY, IF ANY, TO BELIEVE.

SHORTLY, I WILL GIVE YOU SOME GENERAL

CONSIDERATIONS ON CREDIBILITY, BUT RIGHT NOW, I

WILL SAY A FEW THINGS THAT YOU MAY WANT TO

CONSIDER DURING YOUR DELIBERATIONS ON THE

SUBJECT OF COOPERATING WITNESSES. YOU SHOULD ASK

YOURSELVES WHETHER THE WITNESS WOULD BENEFIT MORE BY LYING OR BY TELLING THE TRUTH. WAS THE TESTIMONY MADE UP IN ANY WAY BECAUSE THE WITNESS BELIEVED OR HOPED THAT THEY WOULD SOMEHOW RECEIVE FAVORABLE TREATMENT BY TESTIFYING FALSELY? OR DID THE WITNESS BELIEVE THAT HIS INTERESTS WOULD BE BEST SERVED BY TESTIFYING TRUTHFULLY? IF YOU BELIEVE THAT THE WITNESS WAS MOTIVATED BY HOPES OF PERSONAL GAIN, WAS THIS MOTIVATION ONE THAT WOULD CAUSE HIM TO LIE, OR WAS IT ONE THAT WOULD CAUSE HIM TO TELL THE TRUTH? DID THIS MOTIVATION COLOR HIS TESTIMONY AT ALL?

YOU HAVE ALSO HEARD TESTIMONY THAT THE COOPERATING WITNESS HAS BEEN PROMISED THAT IF HE PROVIDES SUBSTANTIAL ASSISTANCE TO THE GOVERNMENT AND TESTIFIES TRUTHFULLY, COMPLETELY, AND FULLY, THE GOVERNMENT WILL PRESENT TO THE SENTENCING COURT WHAT IS CALLED A 5K1.1 LETTER, OR A “5K LETTER.” THE 5K LETTER SETS FORTH THE COOPERATING WITNESS’S CRIMINAL ACTS AS WELL AS THE SUBSTANTIAL ASSISTANCE THE WITNESS HAS PROVIDED. I INSTRUCT YOU THAT THE 5K LETTER DOES NOT GUARANTEE THE COOPERATING WITNESS A LOWER SENTENCE. THIS IS BECAUSE THE SENTENCING COURT MAY, BUT IS NOT REQUIRED TO, TAKE THE 5K

**LETTER INTO ACCOUNT WHEN IMPOSING SENTENCE ON
THE COOPERATING WITNESS. THUS, WHILE THE DECISION
REGARDING WHETHER TO WRITE THE 5K LETTER RESTS
WITH THE GOVERNMENT, THE FINAL DETERMINATION AS
TO THE SENTENCE TO BE IMPOSED RESTS WITH THE
COURT. ULTIMATELY, YOU SHOULD LOOK AT ALL OF THE
EVIDENCE IN DECIDING WHAT CREDENCE AND WHAT
WEIGHT YOU GIVE TO THE COOPERATING WITNESS.**

OTHER INDIVIDUALS NOT ON TRIAL

IN ADDITION TO THE EVIDENCE ABOUT THE INVOLVEMENT OF COOPERATING ACCOMPLICES WHO TESTIFIED AT TRIAL, EVIDENCE HAS ALSO BEEN INTRODUCED AS TO THE INVOLVEMENT OF CERTAIN OTHER INDIVIDUALS IN THE CRIMES CHARGED IN THE INDICTMENT. YOU MAY NOT DRAW ANY INFERENCE, FAVORABLE OR UNFAVORABLE, TOWARD THE GOVERNMENT OR THE DEFENDANT ON TRIAL FROM THE FACT THAT CERTAIN PERSONS WERE NOT NAMED AS DEFENDANTS IN THIS INDICTMENT. YOU SHOULD DRAW NO INFERENCE FROM THE FACT THAT ANY OTHER PERSON IS NOT PRESENT AT THIS TRIAL. YOUR CONCERN IS SOLELY THE DEFENDANT ON TRIAL BEFORE YOU.

**THAT OTHER INDIVIDUALS ARE NOT ON TRIAL
BEFORE YOU IS NOT A MATTER OF CONCERN TO YOU. YOU
SHOULD NOT SPECULATE AS TO THE REASONS THESE
INDIVIDUALS ARE NOT ON TRIAL BEFORE YOU. THE FACT
THAT THESE INDIVIDUALS ARE NOT ON TRIAL BEFORE
YOU SHOULD NOT CONTROL OR INFLUENCE YOUR
VERDICT WITH REFERENCE TO THE DEFENDANT WHO IS
ON TRIAL. YOU MUST ONLY CONSIDER WHETHER THE
GOVERNMENT HAS PROVED, BEYOND A REASONABLE
DOUBT, THAT THE DEFENDANT IS GUILTY OF A
CRIME. THE FACT THAT THESE INDIVIDUALS ARE NOT ON
TRIAL BEFORE YOU SHOULD NOT CONTROL OR**

**INFLUENCE IN ANY WAY YOUR VERDICT WITH
REFERENCE TO THE DEFENDANT.**

LAW ENFORCEMENT EMPLOYEE TESTIMONY

DURING THIS TRIAL, YOU HAVE HEARD THE TESTIMONY OF ACTIVE OR RETIRED LAW ENFORCEMENT EMPLOYEES. THE FACT THAT A WITNESS IS A LAW ENFORCEMENT EMPLOYEE DOES NOT MEAN THAT HIS TESTIMONY IS ENTITLED TO ANY GREATER WEIGHT. BY THE SAME TOKEN, THE TESTIMONY OF SUCH A WITNESS IS NOT ENTITLED TO LESS CONSIDERATION FOR THAT REASON.

AT THE SAME TIME, IT IS QUITE LEGITIMATE FOR DEFENSE COUNSEL TO TRY TO ATTACK THE CREDIBILITY OF A LAW ENFORCEMENT WITNESS ON THE GROUNDS THAT HIS TESTIMONY MAY BE COLORED BY A PERSONAL OR PROFESSIONAL INTEREST IN THE OUTCOME OF THE

CASE.

YOU SHOULD CONSIDER THE TESTIMONY OF A LAW ENFORCEMENT EMPLOYEE JUST AS YOU WOULD ANY OTHER EVIDENCE IN THE CASE AND EVALUATE HIS CREDIBILITY JUST AS YOU WOULD THAT OF ANY OTHER WITNESS. AFTER REVIEWING ALL THE EVIDENCE, YOU WILL DECIDE WHETHER TO ACCEPT THE TESTIMONY OF A LAW ENFORCEMENT EMPLOYEE AND WHAT WEIGHT, IF ANY, THAT TESTIMONY DESERVES.

DEFENDANT'S RIGHT NOT TO TESTIFY

THE DEFENDANT DID NOT TESTIFY IN THIS CASE.

UNDER OUR CONSTITUTION, HE HAS NO OBLIGATION TO

TESTIFY OR TO PRESENT ANY OTHER EVIDENCE BECAUSE

IT IS THE PROSECUTION'S BURDEN TO PROVE THE

DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

THAT BURDEN REMAINS WITH THE PROSECUTION

THROUGHOUT THE ENTIRE TRIAL AND NEVER SHIFTS TO

THE DEFENDANT. A DEFENDANT IS NEVER REQUIRED TO

PROVE THAT HE IS INNOCENT.

YOU MAY NOT ATTACH ANY SIGNIFICANCE TO THE

FACT THAT THE DEFENDANT DID NOT TESTIFY. NO

ADVERSE INFERENCE AGAINST HIM MAY BE DRAWN BY

YOU BECAUSE HE DID NOT TAKE THE WITNESS STAND.

**YOU MAY NOT CONSIDER THIS AGAINST THE DEFENDANT
IN ANY WAY IN YOUR DELIBERATIONS IN THE JURY ROOM.**

USE OF EVIDENCE OBTAINED PURSUANT TO SEARCH

YOU HAVE HEARD TESTIMONY ABOUT EVIDENCE

SEIZED IN SEARCHES CONDUCTED BY LAW

ENFORCEMENT OFFICIALS, AND YOU HAVE SEEN SOME OF

THAT EVIDENCE. EVIDENCE OBTAINED FROM THESE

SEARCHES WAS PROPERLY ADMITTED IN THIS CASE, AND

MAY BE PROPERLY CONSIDERED BY YOU. WHETHER YOU

APPROVE OR DISAPPROVE OF HOW IT WAS OBTAINED

SHOULD NOT ENTER INTO YOUR DELIBERATIONS

BECAUSE I NOW INSTRUCT YOU THAT THE USE OF THIS

EVIDENCE IS ENTIRELY LAWFUL.

YOU MUST, THEREFORE, REGARDLESS OF YOUR

PERSONAL OPINIONS, GIVE THIS EVIDENCE FULL

CONSIDERATION ALONG WITH ALL THE OTHER EVIDENCE

**IN THE CASE IN DETERMINING WHETHER THE
GOVERNMENT HAS PROVED THE DEFENDANT'S GUILT
BEYOND A REASONABLE DOUBT.**

CHARTS AND SUMMARIES

EXHIBITS HAVE BEEN PRESENTED IN THIS CASE IN THE FORM OF CHARTS AND SUMMARIES. THESE CHARTS AND SUMMARIES WERE SHOWN TO YOU IN ORDER TO MAKE THE OTHER EVIDENCE MORE MEANINGFUL AND TO AID YOU IN CONSIDERING THE EVIDENCE. THEY ARE NO BETTER THAN THE DOCUMENTS UPON WHICH THEY ARE BASED, AND ARE NOT THEMSELVES INDEPENDENT EVIDENCE. THEREFORE, YOU ARE TO GIVE NO GREATER CONSIDERATION TO THESE CHARTS, SCHEDULES OR SUMMARIES THAN YOU WOULD GIVE TO THE EVIDENCE UPON WHICH THEY ARE BASED. IT IS FOR YOU TO DECIDE WHETHER THE CHARTS, SCHEDULES OR SUMMARIES CORRECTLY PRESENT THE INFORMATION CONTAINED IN

**THE TESTIMONY AND IN THE EXHIBITS ON WHICH THEY
ARE BASED. YOU ARE ENTITLED TO CONSIDER THE
CHARTS, SCHEDULES, AND SUMMARIES IF YOU FIND THAT
THEY ARE OF ASSISTANCE TO YOU IN ANALYZING AND
UNDERSTANDING THE EVIDENCE.**

DEMONSTRATIVE EXHIBITS

THE PARTIES HAVE SHOWN YOU DEMONSTRATIVE EXHIBITS IN THE FORM OF FLOWCHARTS, ORGANIZATIONAL CHARTS, AND DIAGRAMS. THOSE DEMONSTRATIVE EXHIBITS THAT WERE NOT ADMITTED IN EVIDENCE DURING TRIAL, INCLUDING, FOR EXAMPLE, WHITEBOARD SKETCHES, DO NOT CONSTITUTE EVIDENCE, UNLIKE CHARTS AND SUMMARIES THAT WERE ADMITTED IN EVIDENCE THAT I JUST DESCRIBED A MOMENT AGO. DEMONSTRATIVE EXHIBITS NOT ADMITTED IN EVIDENCE ARE SIMPLY VISUAL DEPICTIONS THAT THE PARTIES HAVE USED IN AN EFFORT TO SUMMARIZE THE EVIDENCE IN ORDER TO AID THE JURY. IT IS FOR YOU, THE JURY, TO DECIDE WHETHER A

**DEMONSTRATIVE EXHIBIT IN FACT ACCURATELY
SUMMARIZES THE EVIDENCE.**

REDACTIONS

**AMONG THE EXHIBITS RECEIVED IN EVIDENCE, SOME
DOCUMENTS HAVE BEEN REDACTED.**

**“REDACTED” MEANS THAT PART OF THE DOCUMENT
WAS TAKEN OUT OR COVERED UP. YOU ARE TO CONCERN
YOURSELF ONLY WITH THE PART OF THE ITEM THAT HAS
BEEN ADMITTED INTO EVIDENCE. YOU SHOULD NOT
CONSIDER ANY POSSIBLE REASON WHY ANY OTHER PART
OF IT HAS BEEN DELETED OR COVERED UP.**

PRIOR INCONSISTENT STATEMENTS

YOU HAVE HEARD EVIDENCE THAT A WITNESS MADE A STATEMENT ON AN EARLIER OCCASION WHICH COUNSEL ARGUES IS INCONSISTENT WITH THE WITNESS'S TRIAL TESTIMONY. EVIDENCE OF WHAT IS ARGUABLY A PRIOR INCONSISTENT STATEMENT WAS PLACED BEFORE YOU FOR THE LIMITED PURPOSE OF HELPING YOU DECIDE WHETHER TO BELIEVE THE TRIAL TESTIMONY OF THE WITNESS WHO CONTRADICTED HIMSELF OR HERSELF. IF YOU FIND THAT THE WITNESS MADE AN EARLIER STATEMENT THAT CONFLICTS WITH HIS TRIAL TESTIMONY, YOU MAY CONSIDER THAT FACT IN DECIDING HOW MUCH OF HIS TRIAL TESTIMONY, IF ANY, TO BELIEVE.

**IN MAKING THIS DETERMINATION, YOU MAY
CONSIDER WHETHER THE WITNESS PURPOSELY MADE A
FALSE STATEMENT OR WHETHER IT WAS AN INNOCENT
MISTAKE; WHETHER THE INCONSISTENCY CONCERNS AN
IMPORTANT FACT, OR WHETHER IT HAD TO DO WITH A
SMALL DETAIL; WHETHER THE WITNESS HAD AN
EXPLANATION FOR THE INCONSISTENCY, AND WHETHER
THAT EXPLANATION APPEALED TO YOUR COMMON
SENSE.**

**IT IS EXCLUSIVELY YOUR DUTY, BASED UPON ALL
THE EVIDENCE AND YOUR OWN GOOD JUDGMENT, TO
DETERMINE WHETHER THE PRIOR STATEMENT WAS
INCONSISTENT AND, IF SO, HOW MUCH WEIGHT, IF ANY,**

**SHOULD BE GIVEN TO THE INCONSISTENT STATEMENT IN
DETERMINING WHETHER TO BELIEVE ALL, PART, OR
NONE OF THE WITNESS'S TESTIMONY.**

UNCHARGED ACTS CONSIDERED FOR A LIMITED

PURPOSE

**YOU HAVE HEARD EVIDENCE THAT THE DEFENDANT
ENGAGED IN CONDUCT OTHER THAN THE CRIMES
CHARGED IN THE INDICTMENT. THE DEFENDANT IS NOT
ON TRIAL FOR COMMITTING ANY ACTS NOT CHARGED IN
THE INDICTMENT OR FOR ACTS COMMITTED OUTSIDE
THE TIME PERIODS CHARGED IN EACH COUNT OF THE
INDICTMENT. CONSEQUENTLY, YOU MAY NOT CONSIDER
EVIDENCE OF THOSE OTHER ACTS AS A SUBSTITUTE FOR
EVIDENCE THAT THE DEFENDANT COMMITTED THE
CRIMES CHARGED IN THIS CASE. NOR MAY YOU CONSIDER
EVIDENCE OF THOSE OTHER ACTS AS PROOF THAT THE
DEFENDANT HAS A CRIMINAL PROPENSITY; THAT IS, YOU**

MAY NOT CONCLUDE THAT HE LIKELY COMMITTED THE CRIMES CHARGED IN THE INDICTMENT BECAUSE HE WAS PREDISPOSED TO CRIMINAL CONDUCT.

INSTEAD, YOU MAY CONSIDER EVIDENCE OF UNCHARGED CONDUCT BY THE DEFENDANT FOR LIMITED PURPOSES, AND YOU MAY CONSIDER IT ONLY FOR THE FOLLOWING LIMITED PURPOSES, WHICH I WILL NOW DESCRIBE. YOU MAY ONLY CONSIDER EVIDENCE OF UNCHARGED CONDUCT:

- AS EVIDENCE OF CONDUCT THAT IS INEXTRICABLY INTERTWINED WITH EVIDENCE OF THE CHARGED CRIMES;**

- **AS EVIDENCE ENABLING YOU TO UNDERSTAND THE COMPLETE STORY OF THE CHARGED CRIMES;**
- **AS EVIDENCE CORROBORATING THE TESTIMONY OF OTHER GOVERNMENT WITNESSES; AND**
- **AS EVIDENCE PROVING MOTIVE, OPPORTUNITY, INTENT, PREPARATION, PLAN, KNOWLEDGE, IDENTITY, ABSENCE OF MISTAKE, OR LACK OF ACCIDENT.**

EVIDENCE OF UNCHARGED CONDUCT BY THE DEFENDANT MAY NOT BE CONSIDERED BY YOU FOR ANY PURPOSE OTHER THAN THE ONES I HAVE JUST LISTED.

CONSCIOUSNESS OF GUILT

YOU HAVE HEARD TESTIMONY THAT THE DEFENDANT MADE CERTAIN STATEMENTS OUTSIDE THE COURTRoom TO LAW ENFORCEMENT AUTHORITIES IN WHICH THE DEFENDANT CLAIMED THAT HIS CONDUCT WAS CONSISTENT WITH INNOCENCE AND NOT WITH GUILT. THE GOVERNMENT CLAIMS THAT THESE STATEMENTS IN WHICH HE EXONERATED OR EXCULPATED HIMSELF ARE FALSE.

IF YOU FIND THAT THE DEFENDANT GAVE A FALSE STATEMENT IN ORDER TO DIVERT SUSPICION FROM HIMSELF, YOU MAY, BUT ARE NOT REQUIRED TO INFER THAT THE DEFENDANT BELIEVED THAT HE WAS GUILTY. YOU MAY NOT, HOWEVER, INFER ON THE BASIS OF THIS

ALONE, THAT THE DEFENDANT IS, IN FACT, GUILTY OF

THE CRIME FOR WHICH HE IS CHARGED.

WHETHER THE EVIDENCE AS TO A DEFENDANT'S

STATEMENTS SHOWS THAT THE DEFENDANT BELIEVED

THAT HE WAS GUILTY, AND THE SIGNIFICANCE, IF ANY, TO

BE ATTACHED TO ANY SUCH EVIDENCE, ARE MATTERS

FOR YOU, THE JURY, TO DECIDE.

PROOF OF MOTIVE IS NOT NECESSARY

**PROOF OF MOTIVE IS NOT A NECESSARY ELEMENT OF
ANY OF THE CRIMES WITH WHICH THE DEFENDANT IS
CHARGED. PROOF OF MOTIVE DOES NOT ESTABLISH
GUILT, NOR DOES THE LACK OF PROOF OF MOTIVE
ESTABLISH THAT THE DEFENDANT IS NOT GUILTY. IF ALL
THE ELEMENTS OF A CRIME ARE PROVEN BEYOND A
REASONABLE DOUBT, IT IS IMMATERIAL WHAT A
DEFENDANT'S MOTIVE FOR THE CRIME MAY BE, OR
WHETHER THE DEFENDANT'S MOTIVE WAS SHOWN AT
ALL. THE PRESENCE OR ABSENCE OF MOTIVE IS,
HOWEVER, A CIRCUMSTANCE WHICH YOU MAY
CONSIDER AS BEARING ON THE INTENT OF THE
DEFENDANT.**

WEIGHING CREDIBILITY INCLUDING *FALSUS IN UNO*

**IN DECIDING WHAT THE FACTS ARE, YOU MUST
DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH
TESTIMONY NOT TO BELIEVE. IN MAKING THAT
DECISION, YOU SHOULD USE THE SAME REASON YOU
WOULD EMPLOY IN MAKING DETERMINATIONS
IMPORTANT IN YOUR OWN AFFAIRS THAT ARE BASED ON
INFORMATION GIVEN TO YOU BY OTHERS. THERE ARE A
NUMBER OF FACTORS YOU MAY TAKE INTO ACCOUNT IN
DETERMINING WHETHER THE TESTIMONY OF A WITNESS
IS BELIEVABLE, INCLUDING THE FOLLOWING:**

- (1) DID THE WITNESS IMPRESS YOU AS
HONEST?**

- (2) DID THE WITNESS HAVE ANY PARTICULAR**

REASON NOT TO TELL THE TRUTH?

**(3) DID THE WITNESS HAVE A PERSONAL INTEREST IN
THE OUTCOME OF THE CASE?**

**(4) DID THE WITNESS SEEM TO HAVE A GOOD
MEMORY?**

**(5) DID THE WITNESS HAVE THE OPPORTUNITY AND
ABILITY TO OBSERVE ACCURATELY THE THINGS THEY
TESTIFIED ABOUT?**

**(6) DID THE WITNESS APPEAR TO UNDERSTAND THE
QUESTIONS CLEARLY AND ANSWER THEM DIRECTLY?**

**(7) DID THE WITNESS'S TESTIMONY DIFFER FROM
THE TESTIMONY OF OTHER WITNESSES?**

PEOPLE SOMETIMES FORGET THINGS. A

CONTRADICTION MAY BE AN INNOCENT LAPSE OF

MEMORY OR IT MAY BE AN INTENTIONAL FALSEHOOD.

CONSIDER, THEREFORE, WHETHER THE CONTRADICTION,

IF THERE WAS ONE, HAS TO DO WITH AN IMPORTANT

FACT OR ONLY A SMALL DETAIL.

DIFFERENT PEOPLE OBSERVING AN EVENT MAY

REMEMBER IT DIFFERENTLY AND THEREFORE TESTIFY

ABOUT IT DIFFERENTLY.

BUT, IF ANY WITNESS IS SHOWN TO HAVE WILLFULLY

LIED ABOUT ANY MATERIAL MATTER, YOU HAVE THE

RIGHT TO CONCLUDE THAT THE WITNESS ALSO LIED

ABOUT OTHER MATTERS. YOU MAY EITHER DISREGARD

ALL OF THAT WITNESS'S TESTIMONY, OR YOU MAY

**ACCEPT WHATEVER PART OF IT YOU THINK DESERVES TO
BE BELIEVED.**

**YOU MAY CONSIDER THE FACTORS I HAVE JUST
DISCUSSED WITH YOU IN DECIDING HOW MUCH WEIGHT
TO GIVE TO TESTIMONY.**

II. LEGAL ELEMENTS OF THE CRIME CHARGED

INTRODUCTION TO INDICTMENT

I WILL NOW TURN TO THE SECOND PART OF THIS CHARGE—AND WILL, AS I INDICATED AT THE OUTSET, INSTRUCT YOU AS TO THE SPECIFIC ELEMENTS OF THE CRIMES CHARGED THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT TO WARRANT A FINDING OF GUILT IN THIS CASE.

THE DEFENDANT IS FORMALLY CHARGED IN AN INDICTMENT. AS I INSTRUCTED YOU AT THE BEGINNING OF THIS CASE, AN INDICTMENT IS A CHARGE OR ACCUSATION. THE INDICTMENT IN THIS CASE CONTAINS THREE COUNTS.

EACH COUNT OF THE INDICTMENT CHARGES THE DEFENDANT WITH A DIFFERENT CRIME.

YOU MUST, AS A MATTER OF LAW, CONSIDER EACH COUNT OF THE INDICTMENT SEPARATELY, AND YOU MUST RETURN A SEPARATE VERDICT FOR EACH COUNT ON WHICH HE IS CHARGED.

TO REPEAT, AN INDICTMENT IS MERELY AN ACCUSATION IN WRITING. IT IS NOT EVIDENCE OF GUILT. IT IS ENTITLED TO NO WEIGHT IN YOUR DETERMINATION OF THE FACTS. THE DEFENDANT HAS PLEADED NOT GUILTY, THEREBY PLACING IN ISSUE EACH ALLEGATION IN THE INDICTMENT.

THE THREE COUNTS CHARGED IN THE INDICTMENT

**ARE AS FOLLOWS: ONE COUNT OF CONSPIRACY TO
VIOLATE THE FOREIGN CORRUPT PRACTICES ACT, ONE
COUNT OF VIOLATING THE FOREIGN CORRUPT
PRACTICES ACT, AND ONE COUNT OF CONSPIRACY TO
COMMIT MONEY LAUNDERING.**

VENUE

THE INDICTMENT ALLEGES THAT THE CRIMES CHARGED OCCURRED IN PART IN THIS JUDICIAL DISTRICT, WHICH IS THE EASTERN DISTRICT OF NEW YORK. THIS DISTRICT ENCOMPASSES THE BOROUGHS OF BROOKLYN, QUEENS, AND STATEN ISLAND, AS WELL AS NASSAU AND SUFFOLK COUNTIES ON LONG ISLAND, AND THE WATERS WITHIN MANHATTAN AND THE BRONX, WHICH INCLUDE THE WATERS SURROUNDING THE ISLAND OF MANHATTAN THAT SEPARATE MANHATTAN FROM THE OTHER BOROUGHS OF NEW YORK CITY AND FROM THE STATE OF NEW JERSEY, AS WELL AS THE AIR SPACE ABOVE THE DISTRICT OR THE WATERS IN THE DISTRICT.

**TO ESTABLISH THAT VENUE FOR A CHARGED CRIME
IS APPROPRIATE IN THIS DISTRICT, THE GOVERNMENT
MUST PROVE THAT SOME ACT IN FURTHERANCE OF THE
CRIME OCCURRED HERE, IN THE EASTERN DISTRICT OF
NEW YORK. THIS MEANS THAT WITH RESPECT TO EACH
CRIME CHARGED, EVEN IF OTHER ACTS WERE
COMMITTED OUTSIDE THIS DISTRICT OR IF THE CRIME
WAS COMPLETED ELSEWHERE, VENUE IS ESTABLISHED IN
THE EASTERN DISTRICT OF NEW YORK SO LONG AS SOME
ACT IN FURTHERANCE OF THE CRIME TOOK PLACE IN
THIS DISTRICT. INDEED, A DEFENDANT NEED NOT
PERSONALLY HAVE BEEN PRESENT IN THE DISTRICT FOR
VENUE TO BE PROPER. VENUE TURNS ON WHETHER ANY**

PART OF THE CRIME OR ANY ACT IN FURTHERANCE OF THE OFFENSE WAS COMMITTED IN THE DISTRICT. VENUE IS PROPER IN A DISTRICT WHERE THE DEFENDANT INTENTIONALLY OR KNOWINGLY CAUSES AN ACT IN FURTHERANCE OF THE CHARGED OFFENSE TO OCCUR OR WHERE IT IS FORESEEABLE THAT SUCH AN ACT WOULD OCCUR IN THE DISTRICT. IN A CONSPIRACY, SUCH AS THOSE CHARGED IN COUNTS ONE AND THREE, ACTIONS OF COCONSPIRATORS, AS WELL AS ACTIONS CAUSED BY COCONSPIRATORS, MAY BE SUFFICIENT TO CONFER VENUE IF IT WAS REASONABLY FORESEEABLE TO THE DEFENDANT THAT THE ACTS WOULD OCCUR IN THE EASTERN DISTRICT OF NEW YORK.

IN DETERMINING WHETHER SOME ACT IN
FURTHERANCE OF THE CRIME YOU ARE CONSIDERING
OCCURRED IN THE EASTERN DISTRICT OF NEW YORK,
YOU MAY CONSIDER A NUMBER OF THINGS. VENUE CAN
BE CONFERRED BASED ON PHYSICAL PRESENCE OR
CONDUCT, AND PASSING THROUGH A DISTRICT,
INCLUDING THROUGH OR OVER WATERS, IS SUFFICIENT
TO CONFER VENUE. VENUE CAN ALSO BE BASED ON
ELECTRONIC IMPULSES, INCLUDING EMAIL
COMMUNICATIONS AND ELECTRONIC TRANSFERS OF
FUNDS SUCH AS BANKING TRANSFERS, PASSING THROUGH
A DISTRICT. VENUE LIES IN ANY DISTRICT WHERE
ELECTRONIC COMMUNICATIONS ARE SENT OR RECEIVED

AND ANY DISTRICT THROUGH WHICH ELECTRONIC
COMMUNICATIONS ARE ROUTED. VENUE IS PROPER
WHERE A TELEPHONIC COMMUNICATION IN
FURTHERANCE OF A CRIME WAS MADE AND WHERE IT
WAS RECEIVED. THE GOVERNMENT NEED NOT PROVE ALL
OF THESE BASES OF VENUE; ANY ONE IS SUFFICIENT.

WHILE THE GOVERNMENT'S BURDEN AS TO
EVERYTHING ELSE IN THE CASE IS PROOF BEYOND A
REASONABLE DOUBT, A STANDARD THAT I HAVE
ALREADY EXPLAINED TO YOU, THE GOVERNMENT MUST
PROVE VENUE BY THE LESSER STANDARD OF
PREPONDERANCE OF THE EVIDENCE. TO ESTABLISH A
FACT BY A PREPONDERANCE OF THE EVIDENCE MEANS TO

PROVE THAT THE FACT IS MORE LIKELY TRUE THAN NOT.

A PREPONDERANCE OF THE EVIDENCE MEANS THE GREATER WEIGHT OF THE EVIDENCE, BOTH DIRECT AND CIRCUMSTANTIAL.

FINALLY, YOU NEED NOT CONSIDER VENUE WITH RESPECT TO COUNT TWO, WHICH CHARGES THAT THE CRIME OCCURRED IN THE SOUTHERN DISTRICT OF TEXAS, WHICH INCLUDES HARRIS COUNTY AND THE GREATER HOUSTON, TEXAS AREA. I INSTRUCT YOU THAT YOU SHOULD REGARD VENUE AS TO COUNT TWO AS PROVEN. ACCORDINGLY, YOU NEED ONLY CONSIDER VENUE WITH RESPECT TO COUNTS ONE AND THREE.

DATES APPROXIMATE

THE INDICTMENT CHARGES “ON OR ABOUT” CERTAIN DATES. IT DOES NOT MATTER IF THE INDICTMENT CHARGES THAT A SPECIFIC ACT OCCURRED ON OR ABOUT A CERTAIN DATE, AND THE EVIDENCE INDICATES THAT, IN FACT, IT WAS ON ANOTHER DATE. THE LAW ONLY REQUIRES SUBSTANTIAL SIMILARITY BETWEEN THE DATES ALLEGED IN THE INDICTMENT AND THE DATES ESTABLISHED BY TESTIMONY OR EXHIBITS.

**USE OF CONJUNCTIVE AND DISJUNCTIVE IN
INDICTMENT**

**ONE OR MORE COUNTS OF THE INDICTMENT MAY
ACCUSE THE DEFENDANT OF VIOLATING THE SAME
STATUTE IN MORE THAN ONE WAY. IN OTHER WORDS,
THE INDICTMENT MAY ALLEGE THAT THE STATUTE IN
QUESTION WAS VIOLATED BY VARIOUS ACTS WHICH ARE
IN THE INDICTMENT JOINED BY THE CONJUNCTIVE WORD
“AND,” WHILE THE STATUTE AND THE ELEMENTS OF THE
OFFENSE ARE STATED IN THE DISJUNCTIVE, USING THE
WORD “OR.” IN THESE INSTANCES, IT IS SUFFICIENT FOR
A FINDING OF GUILT IF THE EVIDENCE ESTABLISHED
BEYOND A REASONABLE DOUBT THE VIOLATION OF THE
STATUTE BY ANY ONE OF THE ACTS CHARGED.**

KNOWINGLY, WILLFULLY, AND INTENTIONALLY
DURING THESE INSTRUCTIONS ON THE ELEMENTS OF
THE CRIME CHARGED, YOU WILL HEAR ME USE THE
WORDS “KNOWINGLY,” “WILLFULLY,” AND
“INTENTIONALLY” FROM TIME TO TIME. BEFORE YOU
CAN FIND THE DEFENDANT GUILTY, YOU MUST BE
SATISFIED THAT THE DEFENDANT WAS ACTING
KNOWINGLY, WILLFULLY, AND INTENTIONALLY.

A PERSON ACTS “KNOWINGLY” IF HE ACTS
INTENTIONALLY AND VOLUNTARILY AND NOT BECAUSE
OF IGNORANCE, MISTAKE, ACCIDENT, OR CARELESSNESS.
WHETHER THE DEFENDANT ACTED KNOWINGLY MAY BE
PROVEN BY HIS CONDUCT AND BY ALL OF THE FACTS AND
CIRCUMSTANCES SURROUNDING THE CASE.

A PERSON ACTS “WILLFULLY” IF HE ACTS KNOWINGLY AND PURPOSEFULLY, WITH AN INTENT TO DO SOMETHING THE LAW FORBIDS; THAT IS TO SAY, WITH A BAD PURPOSE EITHER TO DISOBEY OR TO DISREGARD THE LAW. HOWEVER, THE GOVERNMENT NEED NOT PROVE THAT THE DEFENDANT KNEW THAT HE WAS BREAKING ANY PARTICULAR LAW OR ANY PARTICULAR RULE OR WAS AWARE OF ANY PARTICULAR LAW OR PARTICULAR RULE. THE GOVERNMENT MUST ONLY SHOW THAT THE DEFENDANT WAS AWARE OF THE GENERALLY UNLAWFUL NATURE OF HIS ACTS.

A PERSON ACTS “INTENTIONALLY” IF HE ACTS DELIBERATELY AND PURPOSEFULLY. THAT IS, THE ACTS

**MUST HAVE BEEN THE PRODUCT OF HIS CONSCIOUS,
OBJECTIVE DECISION RATHER THAN THE PRODUCT OF A
MISTAKE OR ACCIDENT.**

**THESE ISSUES OF KNOWLEDGE, WILLFULNESS, AND
INTENT REQUIRE YOU TO MAKE A DETERMINATION
ABOUT THE DEFENDANT'S STATE OF MIND, SOMETHING
THAT CAN RARELY BE PROVEN DIRECTLY. A WISE AND
CAREFUL CONSIDERATION OF ALL THE CIRCUMSTANCES
BEFORE YOU MAY, HOWEVER, PERMIT YOU TO MAKE A
DETERMINATION AS TO THE DEFENDANT'S STATE OF
MIND. INDEED, IN YOUR EVERYDAY AFFAIRS, YOU ARE
FREQUENTLY CALLED UPON TO DETERMINE A PERSON'S
STATE OF MIND FROM HIS WORDS AND ACTIONS IN GIVEN**

**CIRCUMSTANCES. YOU ARE ASKED TO DO THE SAME
HERE.**

CONSPIRACY GENERALLY

I WILL FIRST EXPLAIN THE CRIME OF CONSPIRACY GENERALLY BEFORE TURNING TO THE ALLEGED OBJECTS OF THE CHARGED CONSPIRACIES – THAT IS, OF FOREIGN BRIBERY AND MONEY LAUNDERING.

A CONSPIRACY IS AN OFFENSE SEPARATE FROM THE COMMISSION OF ANY OFFENSE THAT MAY HAVE BEEN COMMITTED PURSUANT TO THE CONSPIRACY. THAT IS BECAUSE THE FORMATION OF A CONSPIRACY, OF A PARTNERSHIP FOR CRIMINAL PURPOSES, IS IN AND OF ITSELF A CRIME. THUS, IF A CONSPIRACY EXISTS, EVEN IF IT SHOULD FAIL IN ACHIEVING ITS UNLAWFUL PURPOSE, IT IS STILL PUNISHABLE AS A CRIME. THE ESSENCE OF THE CHARGE OF CONSPIRACY IS AN UNDERSTANDING

**BETWEEN OR AMONG TWO OR MORE PERSONS, THAT
THEY WILL ACT TOGETHER TO ACCOMPLISH A COMMON
OBJECTIVE THAT THEY KNOW IS UNLAWFUL.**

**IN ORDER TO PROVE THE CRIME OF CONSPIRACY,
THE GOVERNMENT MUST PROVE TWO ELEMENTS
BEYOND A REASONABLE DOUBT:**

**FIRST, THE FIRST ELEMENT IS THAT TWO OR MORE
PERSONS ENTERED INTO THE CHARGED CONSPIRACY;
SECOND, THE SECOND ELEMENT IS THAT THE
DEFENDANT BECAME A MEMBER OF THE CONSPIRACY
WITH KNOWLEDGE OF ITS CRIMINAL GOAL OR GOALS
AND INTENDING BY HIS ACTIONS TO HELP IT SUCCEED.**

CO-CONSPIRATOR STATEMENTS AND CRIMINAL

LIABILITY

TWO OF THE CHARGES AGAINST THE DEFENDANT ALLEGE THAT HE PARTICIPATED IN CONSPIRACIES. IN THAT REGARD, I ADMITTED INTO EVIDENCE AGAINST THE DEFENDANT THE ACTS AND STATEMENTS OF OTHERS BECAUSE THESE ACTS AND STATEMENTS WERE COMMITTED BY PERSONS WHO, THE GOVERNMENT CHARGES, WERE CO-CONSPIRATORS OF THE DEFENDANT.

THE REASON FOR ALLOWING THIS EVIDENCE TO BE RECEIVED AGAINST THE DEFENDANT HAS TO DO WITH THE NATURE OF THE CRIME OF CONSPIRACY. A CONSPIRACY IS OFTEN REFERRED TO AS A PARTNERSHIP IN CRIME. AS IN OTHER TYPES OF PARTNERSHIPS, WHEN

PEOPLE ENTER INTO A CONSPIRACY TO ACCOMPLISH AN UNLAWFUL END, EACH AND EVERY MEMBER BECOMES AN AGENT FOR THE OTHER CONSPIRATORS IN CARRYING OUT THE CONSPIRACY.

ACCORDINGLY, THE REASONABLY FORESEEABLE ACTS, DECLARATIONS, STATEMENTS, AND OMISSIONS OF ANY MEMBER OF THE CONSPIRACY, AND IN FURTHERANCE OF THE COMMON PURPOSE OF THE CONSPIRACY, ARE DEEMED, UNDER THE LAW, TO BE THE ACTS OF ALL OF THE MEMBERS, AND ALL OF THE MEMBERS ARE RESPONSIBLE FOR SUCH ACTS, DECLARATIONS, STATEMENTS, AND OMISSIONS.

THUS, IF YOU FIND THAT THE DEFENDANT WAS A

**MEMBER OF A CONSPIRACY CHARGED IN THE
INDICTMENT, THEN ANY ACTS DONE OR STATEMENTS
MADE IN FURTHERANCE OF THE CONSPIRACY BY
PERSONS ALSO FOUND BY YOU TO HAVE BEEN MEMBERS
OF THAT CONSPIRACY AT THE TIME THOSE ACTS WERE
COMMITTED OR STATEMENTS WERE MADE MAY BE
CONSIDERED AGAINST THE DEFENDANT SO LONG AS THE
ACTS OR STATEMENTS WERE REASONABLY
FORESEEABLE TO THE DEFENDANT. THIS IS SO EVEN IF
SUCH ACTS WERE DONE AND STATEMENTS WERE MADE IN
THE DEFENDANT'S ABSENCE AND WITHOUT HIS
KNOWLEDGE.**

HOWEVER, BEFORE YOU MAY CONSIDER THE

STATEMENTS OR ACTS OF A CO-CONSPIRATOR IN DECIDING THE ISSUE OF A DEFENDANT'S GUILT, YOU MUST FIRST DETERMINE THAT THE ACTS AND STATEMENTS WERE MADE DURING THE EXISTENCE OF, AND IN FURTHERANCE OF, THE UNLAWFUL SCHEME. IF THE ACTS WERE DONE OR THE STATEMENTS MADE BY SOMEONE WHOM YOU DO NOT FIND TO HAVE BEEN A MEMBER OF THE CONSPIRACY, OR IF THEY WERE NOT DONE OR SAID IN FURTHERANCE OF THE CONSPIRACY, THEY MAY NOT BE CONSIDERED BY YOU AS EVIDENCE AGAINST THE DEFENDANT.

I WILL NOW ADDRESS THE COUNTS CHARGED IN THE INDICTMENT.

**COUNT ONE: CONSPIRACY TO VIOLATE THE
FOREIGN CORRUPT PRACTICES BRIBERY PROVISION**

**AS I MENTIONED EARLIER, THE DEFENDANT IS
CHARGED IN COUNT ONE WITH CONSPIRACY TO VIOLATE
THE FOREIGN CORRUPT PRACTICES ACT THROUGH
BRIBERY. COUNT ONE OF THE INDICTMENT READS AS
FOLLOWS:**

**IN OR ABOUT AND BETWEEN MARCH 2015 AND JULY
10, 2020, BOTH DATES BEING APPROXIMATE AND
INCLUSIVE, WITHIN THE EASTERN DISTRICT OF NEW
YORK AND ELSEWHERE, THE DEFENDANT JAVIER
AGUILAR, TOGETHER WITH OTHERS, DID KNOWINGLY
AND WILLFULLY CONSPIRE TO COMMIT ONE OR MORE
OFFENSES AGAINST THE UNITED STATES, TO WIT:**

**(A) BEING A DOMESTIC CONCERN AND AN EMPLOYEE
OF A DOMESTIC CONCERN, TO MAKE USE OF THE MAILS
AND MEANS AND INSTRUMENTALITIES OF INTERSTATE
COMMERCE CORRUPTLY IN FURTHERANCE OF AN OFFER,
PAYMENT, PROMISE TO PAY AND AUTHORIZATION OF THE
PAYMENT OF ANY MONEY, OFFER, GIFT, PROMISE TO GIVE
AND AUTHORIZATION OF THE GIVING OF ANYTHING OF
VALUE TO A FOREIGN OFFICIAL, TO A FOREIGN
POLITICAL PARTY AND OFFICIAL THEREOF, AND TO A
PERSON WHILE KNOWING THAT ALL OR A PORTION OF
SUCH MONEY AND THING OF VALUE WOULD BE AND HAD
BEEN OFFERED, GIVEN AND PROMISED TO A FOREIGN
OFFICIAL AND TO A FOREIGN POLITICAL PARTY AND**

OFFICIAL THEREOF, FOR PURPOSES OF: (I) INFLUENCING ACTS AND DECISIONS OF SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF IN HIS, HER OR ITS OFFICIAL CAPACITY; (II) INDUCING SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF TO DO AND OMIT TO DO ACTS IN VIOLATION OF THE LAWFUL DUTY OF SUCH OFFICIAL AND PARTY; (III) SECURING ANY IMPROPER ADVANTAGE; AND (IV) INDUCING SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF TO USE HIS, HER OR ITS INFLUENCE WITH A FOREIGN GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES THEREOF TO AFFECT AND INFLUENCE ACTS AND DECISIONS OF SUCH

**GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES,
IN ORDER TO ASSIST AGUILAR, VITOL AND OTHERS IN
OBTAINING AND RETAINING BUSINESS FOR AND WITH,
AND DIRECTING BUSINESS TO, VITOL AND OTHERS,
CONTRARY TO TITLE 15, UNITED STATES CODE, SECTION
78DD-2; AND**

**(B) WHILE IN THE TERRITORY OF THE UNITED
STATES, CORRUPTLY TO MAKE USE OF THE MAILS AND
MEANS AND INSTRUMENTALITIES OF INTERSTATE
COMMERCE AND TO DO ANY ACT IN FURTHERANCE OF AN
OFFER, PAYMENT, PROMISE TO PAY AND AUTHORIZATION
OF THE PAYMENT OF ANY MONEY, OFFER, GIFT, PROMISE
TO GIVE AND AUTHORIZATION OF THE GIVING OF**

ANYTHING OF VALUE TO A FOREIGN OFFICIAL, TO A FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF, AND TO A PERSON WHILE KNOWING THAT ALL OR A PORTION OF SUCH MONEY AND THING OF VALUE WOULD BE AND HAD BEEN OFFERED, GIVEN AND PROMISED TO A FOREIGN OFFICIAL AND TO A FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF, FOR PURPOSES OF: (I) INFLUENCING ACTS AND DECISIONS OF SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF IN HIS, HER OR ITS OFFICIAL CAPACITY; (II) INDUCING SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF TO DO AND OMIT TO DO ACTS IN VIOLATION OF THE LAWFUL DUTY OF SUCH OFFICIAL

AND PARTY; (III) SECURING ANY IMPROPER ADVANTAGE;
AND (IV) INDUCING SUCH FOREIGN OFFICIAL, FOREIGN
POLITICAL PARTY AND OFFICIAL THEREOF TO USE HIS,
HER OR ITS INFLUENCE WITH A FOREIGN GOVERNMENT
AND AGENCIES AND INSTRUMENTALITIES THEREOF TO
AFFECT AND INFLUENCE ACTS AND DECISIONS OF SUCH
GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES,
IN ORDER TO ASSIST ENRIQUE PERE YCAZA AND OTHERS
IN OBTAINING AND RETAINING BUSINESS FOR AND WITH,
AND DIRECTING BUSINESS TO VITOL AND OTHERS,
CONTRARY TO TITLE 15, UNITED STATES CODE, SECTION
78DD-3.

ELEMENTS OF COUNT ONE - CONSPIRACY TO
VIOLATE THE FOREIGN CORRUPT PRACTICES ACT
IN ORDER TO SUSTAIN ITS BURDEN OF PROOF WITH
RESPECT TO THE CONSPIRACY CHARGED IN COUNT ONE,
THE GOVERNMENT MUST PROVE BEYOND A REASONABLE
DOUBT THE FOLLOWING THREE ELEMENTS:

FIRST: THE EXISTENCE OF THE CONSPIRACY
CHARGED, THAT IS, AN AGREEMENT OR UNDERSTANDING
TO VIOLATE THE FOREIGN CORRUPT PRACTICES ACT
BRIBERY PROVISION, A CRIME THAT I WILL DEFINE
LATER;

SECOND: THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY BECAME A MEMBER OF THE CONSPIRACY
CHARGED; AND

**THIRD: THAT ANY ONE OF THE CONSPIRATORS --
THAT IS, THE DEFENDANT OR ANY OTHER MEMBER OF
THE CONSPIRACY -- KNOWINGLY COMMITTED AT LEAST
ONE OVERT ACT DURING THE LIFE OF THE CONSPIRACY.**

I WILL NOW FURTHER EXPLAIN EACH ELEMENT.

ELEMENTS OF CONSPIRACY

FIRST ELEMENT – EXISTENCE OF AGREEMENT
**THE FIRST ELEMENT THAT THE GOVERNMENT MUST
PROVE BEYOND A REASONABLE DOUBT TO ESTABLISH
THE OFFENSE OF CONSPIRACY IS THAT TWO OR MORE
PERSONS ENTERED INTO THE CHARGED CONSPIRACY.
ONE PERSON CANNOT COMMIT THE CRIME OF
CONSPIRACY ALONE.**

IN ORDER FOR THE GOVERNMENT TO SATISFY THIS ELEMENT, YOU NEED NOT FIND THAT THE ALLEGED MEMBERS OF THE CONSPIRACY MET TOGETHER AND ENTERED INTO ANY EXPRESS OR FORMAL AGREEMENT. SIMILARLY, YOU NEED NOT FIND THAT THE ALLEGED CONSPIRATORS STATED, IN WORDS OR WRITING, WHAT THE SCHEME WAS, ITS OBJECT OR PURPOSE, OR EVERY PRECISE DETAIL OF THE SCHEME OR THE MEANS BY WHICH ITS OBJECT OR PURPOSE WAS TO BE ACCOMPLISHED. INDEED, IT IS SUFFICIENT FOR THE GOVERNMENT TO SHOW THAT THE CONSPIRATORS CAME TO A MUTUAL UNDERSTANDING, EITHER SPOKEN OR UNSPOKEN, BETWEEN TWO OR MORE PEOPLE TO

COOPERATE WITH EACH OTHER TO ACCOMPLISH AN UNLAWFUL ACT.

YOU MAY, OF COURSE, FIND THAT THE EXISTENCE OF AN AGREEMENT TO DISOBEY OR DISREGARD THE LAW HAS BEEN ESTABLISHED BY DIRECT PROOF. HOWEVER, SINCE CONSPIRACY IS, BY ITS VERY NATURE, CHARACTERIZED BY SECRECY, YOU MAY ALSO INFERR ITS EXISTENCE FROM THE CIRCUMSTANCES OF A GIVEN CASE AND THE CONDUCT OF THE PARTIES INVOLVED.

IN THE CONTEXT OF CONSPIRACY CASES, ACTIONS OFTEN SPEAK LOUDER THAN WORDS. IN DETERMINING WHETHER AN AGREEMENT EXISTED HERE, CONSIDER THE ACTIONS AND STATEMENTS OF ALL OF THOSE YOU

FIND TO BE PARTICIPANTS AS PROOF THAT A COMMON DESIGN EXISTED ON THE PART OF THE PERSONS CHARGED TO ACT TOGETHER TO ACCOMPLISH AN UNLAWFUL PURPOSE.

SECOND ELEMENT – MEMBERSHIP IN THE CONSPIRACY

THE SECOND ELEMENT THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT TO ESTABLISH THE OFFENSE OF CONSPIRACY, IS THAT A DEFENDANT BECAME A MEMBER IN THE CHARGED CONSPIRACY WITH KNOWLEDGE OF ITS CRIMINAL GOAL OR GOALS AND INTENDING BY HIS ACTIONS TO HELP IT SUCCEED.

IF YOU ARE SATISFIED THAT THE CONSPIRACY

CHARGED IN THE INDICTMENT EXISTED, YOU MUST NEXT ASK YOURSELVES WHO THE MEMBERS OF THAT CONSPIRACY WERE. IN DECIDING WHETHER THE DEFENDANT WAS, IN FACT, A MEMBER OF THE CONSPIRACY, YOU SHOULD CONSIDER WHETHER, BASED UPON ALL OF THE EVIDENCE, IT APPEARS THAT THE DEFENDANT KNOWINGLY AND WILLFULLY JOINED THE CONSPIRACY. DID THE DEFENDANT PARTICIPATE IN IT WITH KNOWLEDGE OF ITS UNLAWFUL PURPOSE AND WITH THE SPECIFIC INTENTION OF FURTHERING ITS BUSINESS OR OBJECTIVE AS AN ASSOCIATE OR WORKER?

NOW, IT HAS BEEN SAID THAT IN ORDER FOR A DEFENDANT TO BE DEEMED A PARTICIPANT IN A

CONSPIRACY, HE MUST HAVE HAD A STAKE IN THE VENTURE OR ITS OUTCOME. YOU ARE INSTRUCTED THAT, WHILE PROOF OF A FINANCIAL INTEREST IN THE OUTCOME OF A SCHEME IS NOT ESSENTIAL, IF YOU FIND THAT A DEFENDANT HAD SUCH AN INTEREST, THAT IS A FACTOR THAT YOU MAY PROPERLY CONSIDER IN DETERMINING WHETHER OR NOT A DEFENDANT WAS A MEMBER OF THE CONSPIRACY CHARGED IN THE INDICTMENT.

AS I MENTIONED A MOMENT AGO, BEFORE THE DEFENDANT CAN BE FOUND TO HAVE BEEN A CONSPIRATOR, YOU MUST FIRST FIND THAT HE KNOWINGLY JOINED IN THE UNLAWFUL AGREEMENT OR

PLAN. THE KEY QUESTION, THEREFORE, IS WHETHER THE DEFENDANT JOINED THE CONSPIRACY WITH AN AWARENESS OF AT LEAST SOME OF THE BASIC AIMS AND PURPOSES OF THE UNLAWFUL AGREEMENT.

IT IS IMPORTANT FOR YOU TO NOTE THAT A DEFENDANT'S PARTICIPATION IN THE CONSPIRACY MUST BE ESTABLISHED BY INDEPENDENT EVIDENCE OF HIS OWN ACTS OR STATEMENTS, AS WELL AS THOSE OF THE OTHER ALLEGED CO-CONSPIRATORS, AND THE REASONABLE INFERENCES WHICH MAY BE DRAWN FROM THEM.

A DEFENDANT'S KNOWLEDGE IS A MATTER OF INFERENCE FROM THE FACTS PROVED. IN THAT

CONNECTION, I INSTRUCT YOU THAT TO BECOME A MEMBER OF THE CONSPIRACY, A DEFENDANT NEED NOT HAVE KNOWN THE IDENTITIES OF EACH AND EVERY OTHER MEMBER, NOR NEED HE HAVE BEEN APPRISED OF ALL OF THEIR ACTIVITIES. MOREOVER, A DEFENDANT NEED NOT HAVE BEEN FULLY INFORMED AS TO ALL OF THE DETAILS OR THE SCOPE OF THE CONSPIRACY IN ORDER TO JUSTIFY AN INFERENCE OF KNOWLEDGE ON HIS PART. FURTHERMORE, A DEFENDANT NEED NOT HAVE JOINED IN ALL OF THE CONSPIRACY'S UNLAWFUL OBJECTIVES.

THE EXTENT OF A DEFENDANT'S PARTICIPATION HAS NO BEARING ON THE ISSUE OF THAT DEFENDANT'S GUILT.

A CONSPIRATOR'S LIABILITY IS NOT MEASURED BY THE EXTENT OR DURATION OF HIS PARTICIPATION. INDEED, EACH MEMBER MAY PERFORM SEPARATE AND DISTINCT ACTS AND MAY PERFORM THEM AT DIFFERENT TIMES. SOME CONSPIRATORS PLAY MAJOR ROLES, WHILE OTHERS PLAY MINOR PARTS IN THE SCHEME. AN EQUAL ROLE IS NOT WHAT THE LAW REQUIRES. IN FACT, EVEN A SINGLE ACT MAY BE SUFFICIENT TO DRAW A DEFENDANT WITHIN THE AMBIT OF THE CONSPIRACY.

I WANT TO CAUTION YOU, HOWEVER, THAT A DEFENDANT'S MERE PRESENCE AT THE SCENE OF AN ALLEGED CRIME DOES NOT, BY ITSELF, MAKE HIM A MEMBER OF THE CONSPIRACY. SIMILARLY, MERE

ASSOCIATION WITH ONE OR MORE MEMBERS OF THE CONSPIRACY DOES NOT AUTOMATICALLY MAKE A DEFENDANT A MEMBER. A PERSON MAY KNOW, OR BE FRIENDLY WITH, A CRIMINAL, WITHOUT BEING A CRIMINAL HIMSELF OR HERSELF. MERE SIMILARITY OF CONDUCT OR THE FACT THAT THEY MAY HAVE ASSEMBLED TOGETHER AND DISCUSSED COMMON AIMS AND INTERESTS DOES NOT NECESSARILY ESTABLISH PROOF OF THE EXISTENCE OF A CONSPIRACY.

I ALSO WANT TO CAUTION YOU THAT MERE KNOWLEDGE OR ACQUIESCENCE, WITHOUT PARTICIPATION, IN THE UNLAWFUL PLAN IS NOT SUFFICIENT. MOREOVER, THE FACT THAT THE ACTS OF A

**DEFENDANT, WITHOUT KNOWLEDGE, MERELY HAPPEN
TO FURTHER THE PURPOSES OR OBJECTIVES OF THE
CONSPIRACY, DOES NOT MAKE THE DEFENDANT A
MEMBER. MORE IS REQUIRED UNDER THE LAW. WHAT IS
NECESSARY IS THAT A DEFENDANT MUST HAVE
PARTICIPATED WITH KNOWLEDGE OF AT LEAST SOME OF
THE PURPOSES OR OBJECTIVES OF THE CONSPIRACY AND
WITH THE INTENTION OF AIDING IN THE
ACCOMPLISHMENT OF THOSE UNLAWFUL ENDS.**

**IN SUM, A DEFENDANT, WITH AN UNDERSTANDING OF
THE UNLAWFUL CHARACTER OF THE CONSPIRACY, MUST
HAVE INTENTIONALLY ENGAGED, ADVISED OR ASSISTED
IN IT FOR THE PURPOSE OF FURTHERING THE ILLEGAL**

**UNDERTAKING. HE THEREBY BECAME A KNOWING AND
WILLING PARTICIPANT IN THE UNLAWFUL AGREEMENT –
THAT IS TO SAY, A CONSPIRATOR. AGAIN, AN ACT IS DONE
“WILLFULLY” IF DONE VOLUNTARILY AND
INTENTIONALLY, AND WITH THE SPECIFIC INTENT TO DO
SOMETHING THE LAW FORBIDS – THAT IS TO SAY, WITH A
BAD PURPOSE EITHER TO DISOBEY OR DISREGARD THE
LAW.**

OVERT ACT

THE THIRD ELEMENT IS THE REQUIREMENT OF AN OVERT ACT. TO SUSTAIN ITS BURDEN OF PROOF WITH RESPECT TO THE CONSPIRACY CHARGED IN COUNT ONE OF THE INDICTMENT, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT AT LEAST ONE OVERT ACT WAS KNOWINGLY COMMITTED IN FURTHERANCE OF THAT CONSPIRACY BY AT LEAST ONE OF THE CO-CONSPIRATORS -- EITHER THE DEFENDANT OR ANY OTHER MEMBER OF THE CONSPIRACY. THE DEFENDANT NEED NOT BE THE PERSON WHO COMMITTED THE ACT.

COUNT ONE OF THE INDICTMENT DESCRIBES THE FOLLOWING ALLEGED "OVERT ACTS":

(A) ON OR ABOUT APRIL 15, 2015, AT AGUILAR'S DIRECTION, LIONEL HANST EXECUTED A SHAM BROKERAGE AGREEMENT WITH A VITOL GROUP COMPANY ON BEHALF OF ZANZA OIL.

(B) ON OR ABOUT DECEMBER 27, 2016, AGUILAR FORWARDED AN EMAIL TO ANTONIO PERE YCAZA THAT WAS ORIGINALLY SENT BY LEGAL REPRESENTATIVES WORKING AT THE DIRECTION OF VITOL IN NEW YORK, NEW YORK, THROUGH THE EASTERN DISTRICT OF NEW YORK TO EXECUTIVES AT VITOL AND OTHERS REQUESTING THAT THEY NOTIFY AGUILAR THAT PETROECUADOR WOULD CONTACT HIM TO CONFIRM THAT PETROECUADOR WOULD RECOGNIZE VITOL AS

[OMAN TRADING INTERNATIONAL'S] AGENT FOR

PURPOSES OF THE FUEL OIL CONTRACT.

(C) ON OR ABOUT JANUARY 3, 2018, ENRIQUE PERE YCAZA SENT AN EMAIL TO LIONEL HANST ATTACHING DRAFT SHAM CONSULTING SERVICES AGREEMENTS BETWEEN LION OIL AND OPV AND BETWEEN ZANZA OIL AND OPV AND ASKING HANST, IN SUM AND SUBSTANCE, TO SIGN AND RETURN THE CONTRACTS AS SOON AS POSSIBLE SO THAT HE COULD SEND THEM TO THE BANK AND OPEN AN ACCOUNT.

(D) ON OR ABOUT MARCH 7, 2018, ENRIQUE PERE YCAZA SENT AN EMAIL TO LIONEL HANST ATTACHING 39 SHAM CONSULTING SERVICES INVOICES FROM OPV TO

**LION OIL. THE 39 INVOICES COVERED THE PERIOD
BETWEEN APPROXIMATELY JANUARY 2017 AND JANUARY
2018.**

**(E) ON OR ABOUT MARCH 7, 2018, ENRIQUE PERE
YCAZA SENT AN EMAIL TO LIONEL HANST ATTACHING 39
SHAM INVOICES FROM OPV TO ZANZA OIL. THE 39
INVOICES COVERED THE PERIOD BETWEEN
APPROXIMATELY JANUARY 2017 AND JANUARY 2018.**

**(F) ON OR ABOUT MARCH 7, 2018, LIONEL HANST
FORWARDED TO AGUILAR AT THE FIRST AGUILAR 007
ACCOUNT AND TO CO-CONSPIRATOR #1, VIA AN ALIAS AND
NON-BUSINESS EMAIL ACCOUNT, AN EMAIL THAT HANST
RECEIVED FROM ENRIQUE PERE YCAZA, ATTACHING 39**

SHAM INVOICES FROM OPV TO ZANZA OIL. THE 39 INVOICES COVERED THE PERIOD BETWEEN APPROXIMATELY JANUARY 2017 AND JANUARY 2018, AND INCLUDED 13 INVOICES WITH INVOICE NUMBERS 10021-24, 10028-30, 10032, 10036-38 AND 10043-44. IN THE EMAIL, WHICH WAS WRITTEN IN SPANISH, HANST TOLD AGUILAR, IN SUM AND SUBSTANCE, THAT HE HAD RECEIVED THE ATTACHED INVOICES FOR PURPORTED CONSULTING SERVICES FROM “LOS EQUATORENOS,” A REFERENCE TO ANTONIO PERE YCAZA AND ENRIQUE PERE YCAZA, AND ASKED AGUILAR HOW HE SHOULD PROCEED.

(G) ON OR ABOUT APRIL 20, 2018, VITOL S.A. WIRED APPROXIMATELY \$750,000 FROM A BANK ACCOUNT

LOCATED IN THE UNITED KINGDOM TO A BANK ACCOUNT

LOCATED IN CURAÇAO IN THE NAME OF ZANZA OIL.

(H) ON OR ABOUT MAY 18, 2018, LIONEL HANST SENT AN EMAIL (THE “HANST MAY 18 EMAIL”) TO AGUILAR AT THE FIRST AGUILAR 007 ACCOUNT ATTACHING A SPREADSHEET AND STATING IN SPANISH, IN PART, “I RECEIVED QUITE A FEW INVOICES FROM ECUADOR, BASICALLY, THE INVOICES UP UNTIL OCTOBER 2017. THE TOTAL IS 1,434K, 510K WAS ALREADY PAID, SO IT IS STILL NECESSARY TO PAY 924K . . . AND GIVE ME THE OK IF EVERYTHING IS CORRECT SO I CAN START MAKING THE PAYMENTS IN BATCHES.”

(I) ON OR ABOUT MAY 18, 2018, AGUILAR, VIA THE

FIRST AGUILAR 007 ACCOUNT, SENT AN EMAIL TO LIONEL HANST IN RESPONSE TO THE HANST MAY 18 EMAIL. AGUILAR STATED, IN SPANISH, AND IN PART, “THAT’S CORRECT... MOVE AHEAD[.] BUT MAKE PAYMENTS FOR NO MORE THAN 150K AND DO THEM EVERY 15 DAYS..... THEY NEED TO BE PATIENT....”

(J) ON OR ABOUT AND BETWEEN MAY 28, 2018 AND JUNE 25, 2018, BOTH DATES BEING APPROXIMATE AND INCLUSIVE, ZANZA OIL WIRED THREE PAYMENTS TOTALING APPROXIMATELY €201,306 AND ONE PAYMENT TOTALING APPROXIMATELY \$19,283 TO BANK ACCOUNTS FOR OPV LOCATED IN THE CAYMAN ISLANDS AND CURAÇAO. OPV’S BANK STATEMENTS SHOWING THESE

**WIRES REFERENCED THE SAME 13 INVOICES, INCLUDING
INVOICES WITH NUMBER 10021-24, 10028-30, 10032, 10036-38
AND 10043-44, AS REFERENCED IN SUB-PARAGRAPH (F)
ABOVE.**

**THE GOVERNMENT DOES NOT NEED TO PROVE ANY
OF THESE SPECIFIC OVERT ACTS ALLEGED IN THE
INDICTMENT AND THAT I JUST LISTED. YOU MAY FIND
THAT OVERT ACTS WERE COMMITTED IN FURTHERANCE
OF THE CONSPIRACY THAT ARE NOT LISTED ABOVE.
ULTIMATELY, THE ONLY REQUIREMENT IS THAT ONE OF
THE MEMBERS OF THE CONSPIRACY, AGAIN, NOT
NECESSARILY THE DEFENDANT, HAS KNOWINGLY AND
WILLFULLY TAKEN SOME STEP OR ACTION IN**

FURTHERANCE OF THE CONSPIRACY DURING THE LIFE OF THAT CONSPIRACY.

IN OTHER WORDS, THE OVERT ACT ELEMENT IS A REQUIREMENT THAT THE AGREEMENT WENT BEYOND THE MERE TALKING STAGE, THE MERE AGREEMENT STAGE. THE REQUIREMENT OF AN OVERT ACT IS A REQUIREMENT THAT SOME ACTION BE TAKEN DURING THE LIFE OF THE CONSPIRACY BY ONE OF THE CO-CONSPIRATORS IN ORDER TO FURTHER THAT CONSPIRACY.

YOU NEED NOT REACH UNANIMOUS AGREEMENT ON WHETHER A PARTICULAR OVERT ACT WAS COMMITTED IN FURTHERANCE OF THE CONSPIRACY; YOU JUST NEED

TO ALL AGREE THAT AT LEAST ONE OVERT ACT WAS SO COMMITTED.

YOU SHOULD ALSO BEAR IN MIND THAT THE OVERT ACT, STANDING ALONE, MAY BE AN INNOCENT, LAWFUL ACT. FREQUENTLY, HOWEVER, AN APPARENTLY INNOCENT ACT LOSES ITS HARMLESS CHARACTER IF IT IS A STEP IN CARRYING OUT, PROMOTING, AIDING OR ASSISTING THE CONSPIRATORIAL SCHEME. YOU ARE THEREFORE INSTRUCTED THAT THE OVERT ACT DOES NOT HAVE TO BE AN ACT THAT IN AND OF ITSELF IS CRIMINAL OR CONSTITUTES AN OBJECTIVE OF THE CONSPIRACY.

OBJECTS OF THE CONSPIRACY CHARGED IN COUNT

ONE

I WILL NOW EXPLAIN WHAT CONSTITUTES VIOLATIONS OF THE ANTIBRIBERY PROVISIONS OF THE FOREIGN CORRUPT PRACTICES ACT, WHICH ARE ALLEGED TO BE THE OBJECTS OF THE CONSPIRACY CHARGED IN COUNT ONE OF THE INDICTMENT. THE OBJECTS OF A CONSPIRACY ARE THE ILLEGAL GOAL OR GOALS THE CO-CONSPIRATORS AGREE OR HOPE TO ACHIEVE.

THE FOREIGN CORRUPT PRACTICES ACT'S ANTIBRIBERY PROVISIONS MAKE IT A CRIME FOR CERTAIN INDIVIDUALS TO OFFER TO PAY, PAY, PROMISE TO PAY, OR AUTHORIZE THE PAYMENT OF MONEY OR

**ANYTHING OF VALUE TO A FOREIGN OFFICIAL FOR ONE
OR MORE SPECIFIED BUSINESS PURPOSES, WHICH I WILL
EXPLAIN.**

**I REMIND YOU THAT THE DEFENDANT IS NOT
CHARGED IN COUNT ONE WITH ACTUALLY COMMITTING
THESE UNLAWFUL ACTS, BUT RATHER WITH CONSPIRING
TO COMMIT THEM. I THEREFORE DESCRIBE FOR YOU THE
ELEMENTS OF THESE UNLAWFUL ACTS ONLY SO THAT
YOU CAN UNDERSTAND WHAT THE GOVERNMENT MUST
PROVE WAS AN OBJECT OR OBJECTIVE OF THE
CONSPIRACY.**

**THE TWO OBJECTS OF THE CONSPIRACY CHARGED IN
COUNT ONE ARE:**

(1) VIOLATING THE FOREIGN CORRUPT PRACTICES ACT AS A DOMESTIC CONCERN OR AN EMPLOYEE OF A DOMESTIC CONCERN (THE “DOMESTIC CONCERN PRONG”) BY OFFERING TO PAY, PAYING, PROMISING TO PAY, OR AUTHORIZING THE PAYMENT OF MONEY OR ANYTHING OF VALUE TO A FOREIGN OFFICIAL FOR ONE OR MORE SPECIFIED BUSINESS PURPOSES, WHICH I WILL EXPLAIN; AND

(2) VIOLATING THE FOREIGN CORRUPT PRACTICES ACT WHILE IN THE TERRITORY OF THE UNITED STATES (THE “TERRITORIAL PRONG”) BY OFFERING TO PAY, PAYING, PROMISING TO PAY, OR AUTHORIZING THE PAYMENT OF MONEY OR ANYTHING OF VALUE TO A

**FOREIGN OFFICIAL FOR ONE OR MORE SPECIFIED
BUSINESS PURPOSES, WHICH I WILL EXPLAIN.**

**IN CONSIDERING THE TWO ALLEGED OBJECTS OF
THE CONSPIRACY CHARGED IN COUNT ONE, YOU SHOULD
KEEP IN MIND THAT YOU NEED NOT FIND THAT THE
CONSPIRATORS AGREED TO ACCOMPLISH EACH OF
THESE TWO OBJECTS OR GOALS. INSTEAD, AN
AGREEMENT TO ACCOMPLISH EITHER ONE OF THE TWO
OBJECTS IS SUFFICIENT. HOWEVER, YOU MUST ALL
AGREE ON THE SPECIFIC OBJECT OR OBJECTS THE
CONSPIRATORS AGREED TO TRY TO ACCOMPLISH, AND
YOU MAY FIND THAT THEY AGREED TO TRY TO
ACCOMPLISH MORE THAN ONE.**

IF THE GOVERNMENT FAILS TO PROVE THAT ANY OF THE TWO OBJECTS WAS AN OBJECT OF THE CONSPIRACY, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY OF COUNT ONE. HOWEVER, IF YOU FIND THAT TWO OR MORE PERSONS AGREED TO ACCOMPLISH ANY OF THE TWO OBJECTS CHARGED IN COUNT ONE, THE ILLEGAL PURPOSE ELEMENT WILL BE SATISFIED, REGARDLESS OF WHETHER OR NOT THAT OBJECT WAS IN FACT ACCOMPLISHED — THAT IS, REGARDLESS OF WHETHER THAT GOAL SUCCEEDED.

OBJECT #1: DOMESTIC CONCERN PRONG –

ELEMENTS AND DEFINITIONS

THE ELEMENTS OF A VIOLATION OF THE FOREIGN CORRUPT PRACTICES ACT UNDER THE DOMESTIC

CONCERN PRONG ARE:

**FIRST, AT RELEVANT TIMES, AN INDIVIDUAL WAS A
“DOMESTIC CONCERN,” OR AN EMPLOYEE OF A
DOMESTIC CONCERN;**

**SECOND, THE INDIVIDUAL ACTED CORRUPTLY AND
WILLFULLY;**

**THIRD, THE INDIVIDUAL MADE USE OF THE MAILS OR
ANY MEANS OR INSTRUMENTALITY OF INTERSTATE
COMMERCE, SUCH AS EMAIL, TELEPHONE CALLS, OR
TEXT OR ELECTRONIC MESSAGES, IN FURTHERANCE OF
THE OFFENSE, OR SUCH USE OF THE MAILS OR ANY MEANS
OR INSTRUMENTALITY OF INTERSTATE COMMERCE IN**

FURTHERANCE OF THE OFFENSE WAS REASONABLY

FORESEEABLE TO THE INDIVIDUAL;

**FOURTH, THE INDIVIDUAL OFFERED, PAID, PROMISED
TO PAY, OR AUTHORIZED THE PAYMENT OF MONEY OR A
GIFT OR OF ANYTHING OF VALUE;**

**FIFTH, THE OFFER, PROMISE TO PAY, OR
AUTHORIZATION OF THE PAYMENT OF MONEY OR A GIFT
OR ANYTHING OF VALUE WAS EITHER: (A) TO A FOREIGN
OFFICIAL; OR (B) TO ANY OTHER PERSON OR ENTITY
WHILE THE INDIVIDUAL OR ANY MEMBER OF THE
ALLEGED CONSPIRACY KNEW THAT ALL OR A PORTION
OF THE PAYMENT WOULD BE OFFERED, GIVEN, OR
PROMISED, DIRECTLY OR INDIRECTLY, TO A FOREIGN
OFFICIAL;**

**SIXTH, THE PAYMENT OFFERED, GIVEN, PROMISED
OR AUTHORIZED WAS INTENDED FOR ANY ONE OF FOUR
PURPOSES: (A) TO INFLUENCE ANY ACT OR DECISION OF A
FOREIGN OFFICIAL IN HIS OFFICIAL CAPACITY; (B) TO
INDUCE—WHICH MEANS TO ENTICE OR PERSUADE—SUCH
A FOREIGN OFFICIAL TO DO OR OMIT TO DO ANY ACT IN
VIOLATION OF THE LAWFUL DUTY OF SUCH FOREIGN
OFFICIAL; (C) TO SECURE ANY IMPROPER ADVANTAGE;
OR (D) TO INDUCE SUCH A FOREIGN OFFICIAL TO USE HIS
OR HER INFLUENCE WITH A FOREIGN GOVERNMENT AND
AGENCIES AND INSTRUMENTALITIES THEREOF TO
AFFECT AND INFLUENCE ACTS AND DECISIONS OF SUCH
GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES;**

AND

**SEVENTH, THE PAYMENT WAS MADE TO ASSIST THE
DOMESTIC CONCERN IN OBTAINING OR RETAINING
BUSINESS FOR OR WITH, OR DIRECTING BUSINESS TO, ANY
PERSON OR COMPANY.**

FIRST ELEMENT – DOMESTIC CONCERN

ASSOCIATION

**THE FIRST ELEMENT IS THAT AN INDIVIDUAL WAS
EITHER A DOMESTIC CONCERN OR AN EMPLOYEE OF A
DOMESTIC CONCERN. A “DOMESTIC CONCERN” IS
DEFINED TO INCLUDE ANY INDIVIDUAL WHO IS A CITIZEN,
NATIONAL, OR RESIDENT OF THE UNITED STATES; AND
ANY CORPORATION, PARTNERSHIP, ASSOCIATION, JOINT-
STOCK COMPANY, BUSINESS TRUST, UNINCORPORATED**

ORGANIZATION, OR SOLE PROPRIETORSHIP WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES, OR WHICH IS ORGANIZED UNDER THE LAWS OF A STATE OF THE UNITED STATES OR A TERRITORY, POSSESSION, OR COMMONWEALTH OF THE UNITED STATES. THE TERM “EMPLOYEE” HAS ITS ORDINARY MEANING.

THE INDICTMENT ALLEGES THAT THE DEFENDANT WAS BOTH A DOMESTIC CONCERN HIMSELF AND THAT HE WAS AN EMPLOYEE OF VITOL, INC., WHICH THE INDICTMENT ALLEGES WAS A DOMESTIC CONCERN. WHETHER THE DEFENDANT IS A DOMESTIC CONCERN OR AN EMPLOYEE OF A DOMESTIC CONCERN ARE FACTUAL

QUESTIONS FOR YOU TO RESOLVE. IN ORDER TO FIND THAT THIS REQUIREMENT HAS BEEN SATISFIED, YOU MUST AGREE UNANIMOUSLY ON HOW IT IS SATISFIED; THAT IS, YOU MUST AGREE UNANIMOUSLY ON THE IDENTITY OF THE DOMESTIC CONCERN. IF YOU FIND EITHER THAT THE DEFENDANT WAS A DOMESTIC CONCERN OR THAT HE WAS AN EMPLOYEE OF A DOMESTIC CONCERN, THIS ELEMENT IS SATISFIED.

SECOND ELEMENT – “CORRUPTLY” AND

“WILLFULLY”

THE SECOND ELEMENT IS THAT THE INDIVIDUAL ACTED CORRUPTLY AND WILLFULLY.

AN ACT IS CORRUPTLY DONE IF IT IS DONE VOLUNTARILY AND INTENTIONALLY AND WITH A BAD

PURPOSE OR EVIL MOTIVE OF ACCOMPLISHING EITHER AN UNLAWFUL END OR RESULT, OR A LAWFUL END OR RESULT BUT BY SOME UNLAWFUL METHOD OR MEANS. THE TERM “CORRUPTLY” IN THE FOREIGN CORRUPT PRACTICES ACT MEANS THAT THE OFFER, PAYMENT, OR PROMISE WAS INTENDED TO INDUCE A FOREIGN OFFICIAL TO MISUSE HIS OR HER OFFICIAL POSITION.

I HAVE ALREADY DEFINED THE TERM “WILLFULLY,” AND YOU SHOULD APPLY THAT DEFINITION HERE. I ADD ONLY THAT THE INDIVIDUAL NEED NOT HAVE BEEN AWARE OF THE SPECIFIC PROVISION OF THE LAW THAT HE IS CHARGED WITH VIOLATING, OR ANY OTHER SPECIFIC PROVISION.

THIRD ELEMENT – USE OF MAIIS OR

INSTRUMENTALITY OF INTERSTATE COMMERCE

THE THIRD ELEMENT IS THAT THE INDIVIDUAL (1)

MADE USE OF THE MAIIS OR ANY OTHER MEANS OR

INSTRUMENTALITY OF INTERSTATE COMMERCE, IN

FURTHERANCE OF THE OFFER, PAYMENT, PROMISE TO

PAY, OR AUTHORIZATION OF PAYMENT, OR (2) SUCH USE

OF THE MAIIS OR ANY MEANS OR INSTRUMENTALITY OF

INTERSTATE COMMERCE IN FURTHERANCE OF THE

OFFER, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION

OF PAYMENT WAS REASONABLY FORESEEABLE TO THE

INDIVIDUAL.

THE TERM “INTERSTATE COMMERCE” MEANS

TRADE, COMMERCE, TRANSPORTATION, OR

**COMMUNICATION AMONG THE SEVERAL STATES, OR
BETWEEN ANY FOREIGN COUNTRY AND ANY STATE, OR
BETWEEN ANY STATE AND ANY PLACE OUTSIDE THEREOF,
AND SUCH TERM INCLUDES INTRASTATE USE OF (A)
TELEPHONES OR OTHER MEANS OF COMMUNICATION,
SUCH AS EMAIL, TEXT MESSAGES, ELECTRONIC
MESSENGER APPLICATIONS OR FAXES, BETWEEN THE
STATES OR BETWEEN THE UNITED STATES AND A
FOREIGN COUNTRY, OR A TRANSFER OF MONEY BY WIRE
BETWEEN STATES OR BETWEEN THE UNITED STATES AND
A FOREIGN COUNTRY; OR (B) ANY OTHER INTERSTATE
COMMERCE INSTRUMENTALITY. IF SUCH MECHANISMS
AS TRADE, TRANSPORTATION, AND COMMUNICATION ARE**

UTILIZED BY PERSONS IN GOODS PASSING BETWEEN VARIOUS STATES, OR BETWEEN THE UNITED STATES AND A FOREIGN COUNTRY, THEY ARE INSTRUMENTALITIES OF INTERSTATE COMMERCE. I INSTRUCT YOU THAT, AS A MATTER OF LAW, SENDING AN INTERNATIONAL WIRE TRANSFER THROUGH A U.S. BANK CONSTITUTES THE USE OF A MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE.

IT IS NOT NECESSARY FOR THE INDIVIDUAL TO BE DIRECTLY OR PERSONALLY INVOLVED IN THE CHARGED WIRE, AS LONG AS THE WIRE WAS REASONABLY FORESEEABLE IN THE EXECUTION OF THE ALLEGED BRIBERY SCHEME. A WIRE MAY BE REASONABLY

**FORESEEABLE WHERE, AMONG OTHER CIRCUMSTANCES,
THE USE OF A WIRE WOULD OCCUR IN THE ORDINARY
COURSE OF BUSINESS.**

**FOURTH ELEMENT – OFFER, PROMISE OR PAYMENT
OF ANYTHING OF VALUE**

**THE FOURTH ELEMENT IS THAT THE INDIVIDUAL
OFFERED, PAID, PROMISED TO PAY, OR AUTHORIZED THE
PAYMENT OF MONEY OR A GIFT OR ANYTHING OF VALUE.**

**A “THING OF VALUE” CAN TAKE ANY FORM, INCLUDING
CASH, CHECK, WIRE TRANSFER, GIFTS, DONATIONS,
CONTRIBUTIONS, OR ANYTHING ELSE. IT IS NOT
REQUIRED THAT THE INDIVIDUAL PROVIDE OR OFFER
THE THING OF VALUE HIMSELF. RATHER, AN INDIVIDUAL
WHO ENGAGES IN BRIBERY OF A FOREIGN OFFICIAL**

**INDIRECTLY, THROUGH ANY OTHER PERSON OR ENTITY,
IS LIABLE UNDER THE FOREIGN CORRUPT PRACTICES ACT
JUST AS IF THE INDIVIDUAL HIMSELF HAD ENGAGED IN
THE BRIBERY DIRECTLY. THUS, IF THE INDIVIDUAL
AUTHORIZED ANOTHER PERSON TO PAY A BRIBE, THAT
AUTHORIZATION ALONE IS SUFFICIENT FOR YOU TO FIND
THAT THIS ELEMENT HAS BEEN PROVED.**

**FURTHERMORE, IT IS NOT NECESSARY THAT THE
PAYMENT ACTUALLY TAKE PLACE. INSTEAD, IT IS THE
OFFER OR THE AUTHORIZATION THAT COMPLETES THE
CRIME. THIS ELEMENT IS SATISFIED IF YOU FIND THAT
THE INDIVIDUAL PROMISED OR AUTHORIZED AN
UNLAWFUL PAYMENT, EVEN IF YOU BELIEVE THAT THE**

PAYMENT WAS NOT ACTUALLY MADE. IT IS SUFFICIENT SIMPLY IF THE INDIVIDUAL BELIEVED THAT A BRIBE WOULD BE OFFERED OR PAID OR THAT HE PROMISED OR AUTHORIZED THE OFFER OR PAYMENT.

FIFTH ELEMENT – FOREIGN OFFICIAL

THE FIFTH ELEMENT IS THAT THE OFFER TO PAY, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION OF PAYMENT WAS TO A FOREIGN OFFICIAL, OR TO ANY OTHER PERSON OR ENTITY, WHILE THE INDIVIDUAL KNEW THAT ALL OR A PORTION OF THE PAYMENT OR GIFT WOULD BE OFFERED, GIVEN, OR PROMISED, DIRECTLY OR INDIRECTLY, TO A FOREIGN OFFICIAL.

I HAVE ALREADY DEFINED THE TERM “KNOWINGLY,”

AND YOU ARE INSTRUCTED TO APPLY THAT DEFINITION HERE. I ALSO ADD THAT A PERSON'S STATE OF MIND IS KNOWING WITH RESPECT TO CONDUCT, A CIRCUMSTANCE, OR RESULT IF: (1) SUCH A PERSON IS AWARE THAT SUCH PERSON IS ENGAGING IN SUCH CONDUCT, THAT SUCH CIRCUMSTANCE EXISTS, OR THAT SUCH RESULT IS SUBSTANTIALLY CERTAIN TO OCCUR; OR (2) SUCH PERSON HAS A FIRM BELIEF THAT SUCH CIRCUMSTANCE EXISTS OR SUCH RESULT IS SUBSTANTIALLY CERTAIN TO OCCUR. A PERSON IS DEEMED TO HAVE KNOWLEDGE OF A CIRCUMSTANCE IF THE EVIDENCE SHOWS THAT HE WAS AWARE OF A HIGH PROBABILITY OF THE EXISTENCE OF SUCH

CIRCUMSTANCE, UNLESS HE ACTUALLY BELIEVES THAT

SUCH CIRCUMSTANCE DOES NOT EXIST.

**THE TERM “FOREIGN OFFICIAL” MEANS ANY
OFFICIAL OR EMPLOYEE OF A FOREIGN GOVERNMENT,
OR ANY DEPARTMENT, AGENCY, OR INSTRUMENTALITY
THEREOF, OR OF A PUBLIC INTERNATIONAL
ORGANIZATION, OR ANY PERSON ACTING IN AN OFFICIAL
CAPACITY FOR OR ON BEHALF OF SUCH GOVERNMENT OR
DEPARTMENT, AGENCY OR INSTRUMENTALITY THEREOF,
OR FOR OR ON BEHALF OF ANY SUCH PUBLIC
INTERNATIONAL ORGANIZATION.**

**THE PARTIES AGREE THAT (A) THE MINISTRY OF
HYDROCARBONS WAS A DEPARTMENT OR AGENCY OF**

THE GOVERNMENT OF ECUADOR, AND (B) THAT PETROECUADOR WAS AN INSTRUMENTALITY OF THE GOVERNMENT OF ECUADOR. ACCORDINGLY, I INSTRUCT YOU THAT ANY OFFICER OR EMPLOYEE OF THE MINISTRY OF HYDROCARBONS OR PETROECUADOR, OR ANYONE ACTING IN AN OFFICIAL CAPACITY FOR OR ON BEHALF OF THE MINISTRY OF HYDROCARBONS OR PETROECUADOR, EVEN IF NOT AN OFFICER OR EMPLOYEE OF THE MINISTRY OF HYDROCARBONS OR PETROECUADOR, WAS A “FOREIGN OFFICIAL” UNDER THE FOREIGN CORRUPT PRACTICES ACT.

**SIXTH ELEMENT – OFFER, PROMISE, PAYMENT OR
AUTHORIZATION INTENDED FOR ONE OF THE CHARGED
PURPOSES**

**THE SIXTH ELEMENT IS THAT THE OFFER, PROMISE,
PAYMENT OR AUTHORIZATION WAS INTENDED FOR ANY
ONE OF FOUR PURPOSES: (A) TO INFLUENCE ANY ACT OR
DECISION OF A FOREIGN OFFICIAL IN HIS OFFICIAL
CAPACITY; (B) TO INDUCE SUCH A FOREIGN OFFICIAL TO
DO OR OMIT TO DO ANY ACT IN VIOLATION OF THE
LAWFUL DUTY OF SUCH FOREIGN OFFICIAL; (C) TO
SECURE ANY IMPROPER ADVANTAGE; OR (D) TO INDUCE
SUCH A FOREIGN OFFICIAL TO USE HIS OR HER
INFLUENCE WITH A FOREIGN GOVERNMENT AND
AGENCIES AND INSTRUMENTALITIES THEREOF TO**

AFFECT AND INFLUENCE ACTS AND DECISIONS OF SUCH GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES.

THE OFFER TO PAY, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION OF PAYMENT DOES NOT NEED TO HAVE BEEN FOR ALL OF THESE PURPOSES. IF THE OFFER TO PAY, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION OF PAYMENT WAS FOR ANY OF THESE PURPOSES, OR MORE THAN ONE, THIS ELEMENT HAS BEEN MET.

SEVENTH ELEMENT – OBTAINING OR RETAINING BUSINESS

THE SEVENTH AND FINAL ELEMENT IS THAT THE OFFER, PROMISE, PAYMENT OR AUTHORIZATION WAS MADE TO ASSIST THE DOMESTIC CONCERN — THAT IS, EITHER THE DEFENDANT OR VITOL, INC. — IN OBTAINING

OR RETAINING BUSINESS FOR OR WITH, OR DIRECTING BUSINESS TO, ANY PERSON OR COMPANY. "OBTAIN BUSINESS" HAS ITS NORMAL MEANING, THAT IS, TO GET, TO ACQUIRE, OR TO SECURE A PERSON OR COMPANY'S BUSINESS. "RETAIN BUSINESS" ALSO HAS ITS NORMAL MEANING, THAT IS, TO KEEP OR CONTINUE TO HAVE A PERSON OR COMPANY'S BUSINESS.

IT IS NOT NECESSARY THAT ANY PERSON OR COMPANY ACTUALLY OBTAINED OR RETAINED ANY BUSINESS AS A RESULT OF THE UNLAWFUL OFFER, PAYMENT, PROMISE, OR GIFT, ONLY THAT THE DEFENDANT INTENDED TO ASSIST THE DOMESTIC CONCERN IN OBTAINING OR RETAINING BUSINESS FOR OR

WITH ANY PERSON OR COMPANY.

OBJECT 2: TERRITORIAL PRONG - ELEMENTS AND

DEFINITIONS

THE ELEMENTS OF A VIOLATION OF THE FOREIGN CORRUPT PRACTICES ACT'S ANTIBRIBERY PROVISIONS UNDER THE TERRITORIAL PRONG ARE:

FIRST, AN INDIVIDUAL WAS NOT AN ISSUER OR A DOMESTIC CONCERN;

SECOND, THE INDIVIDUAL ACTED CORRUPTLY AND WILLFULLY;

THIRD, THE INDIVIDUAL, WHILE PHYSICALLY IN THE TERRITORY OF THE UNITED STATES, USED THE MAILS OR ANY MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE, OR DID ANY OTHER ACT, IN FURTHERANCE OF THE OFFENSE;

**FOURTH, THE INDIVIDUAL OFFERED, PAID, PROMISED
TO PAY, OR AUTHORIZED THE PAYMENT OF MONEY OR A
GIFT OR OF ANYTHING OF VALUE;**

**FIFTH, THAT THE OFFER, PAYMENT, PROMISE TO PAY,
OR AUTHORIZATION OF THE PAYMENT OF MONEY OR A
GIFT OR ANYTHING OF VALUE WAS EITHER (A) TO A
FOREIGN OFFICIAL, OR (B) TO ANY OTHER PERSON OR
ENTITY WHILE THE INDIVIDUAL OR ANY MEMBER OF THE
ALLEGED CONSPIRACY KNEW THAT ALL OR A PORTION
OF THE PAYMENT WOULD BE OFFERED, GIVEN, OR
PROMISED, DIRECTLY OR INDIRECTLY, TO A FOREIGN
OFFICIAL;**

SIXTH, THAT THE PAYMENT OFFERED, GIVEN,

PROMISED OR AUTHORIZED WAS INTENDED FOR ANY ONE OF FOUR PURPOSES RELEVANT TO THIS ACTION: (A) TO INFLUENCE ANY ACT OR DECISION OF A FOREIGN OFFICIAL IN HIS OFFICIAL CAPACITY; (B) TO INDUCE SUCH A FOREIGN OFFICIAL TO DO OR OMIT TO DO ANY ACT IN VIOLATION OF THE LAWFUL DUTY OF SUCH FOREIGN OFFICIAL; (C) TO SECURE ANY IMPROPER ADVANTAGE; OR (D) TO INDUCE SUCH A FOREIGN OFFICIAL TO USE HIS OR HER INFLUENCE WITH A FOREIGN GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES THEREOF TO AFFECT AND INFLUENCE ACTS AND DECISIONS OF SUCH GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES; AND

SEVENTH, THE OFFER, PAYMENT, PROMISE OR AUTHORIZATION WAS MADE TO ASSIST THE DEFENDANT AND OTHERS IN OBTAINING OR RETAINING BUSINESS FOR OR WITH, OR DIRECTING BUSINESS TO, ANY PERSON OR COMPANY, SUCH AS THE DEFENDANT, VITOL, INC., OR VITOL, S.A.

AS YOU CAN SEE, MANY OF THE SAME ELEMENTS THAT APPLY TO A VIOLATION OF THE FOREIGN CORRUPT PRACTICES ACT UNDER THE DOMESTIC CONCERN PRONG (THE FIRST OBJECT OF THE CONSPIRACY) ALSO APPLY TO A VIOLATION UNDER THE TERRITORIAL PRONG (THE SECOND OBJECT OF THE CONSPIRACY). THE MAIN DIFFERENCES ARE THAT, UNDER THE SECOND OBJECT, (I)

THE INDIVIDUAL MUST HAVE ENGAGED IN ANY ACT IN FURTHERANCE OF A CORRUPT PAYMENT, OFFER, PROMISE, OR AUTHORIZATION TO PAY WHILE PHYSICALLY IN THE TERRITORY OF THE UNITED STATES, AND (II) THERE IS NO REQUIREMENT THAT THE INDIVIDUAL MADE USE OF THE MAILED OR ANY MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE.

FIRST ELEMENT – NOT A DOMESTIC CONCERN

THE FIRST ELEMENT IS THAT AN INDIVIDUAL WAS NOT A “DOMESTIC CONCERN.” I HAVE ALREADY DEFINED THE TERM “DOMESTIC CONCERN,” AND YOU SHOULD APPLY THAT DEFINITION HERE. THE INDIVIDUAL COULD STILL HAVE BEEN AN OFFICER, DIRECTOR, EMPLOYEE, OR

AGENT OF A DOMESTIC CONCERN, PROVIDED THAT HE
WAS NOT HIMSELF A DOMESTIC CONCERN.

**SECOND ELEMENT – “CORRUPTLY” AND
“WILLFULLY”**

THE SECOND ELEMENT IS THAT THE INDIVIDUAL
ACTED CORRUPTLY AND WILLFULLY. I HAVE ALREADY
DEFINED THESE TERMS AND YOU ARE INSTRUCTED TO
APPLY THOSE DEFINITIONS HERE.

**THIRD ELEMENT – ACT IN FURTHERANCE WITHIN
THE TERRITORY OF THE UNITED STATES**

THE THIRD ELEMENT IS THAT THE INDIVIDUAL,
WHILE PHYSICALLY IN THE TERRITORY OF THE UNITED
STATES, MADE USE OF THE MAILED OR ANY MEANS OR
INSTRUMENTALITY OF INTERSTATE COMMERCE, OR DID

ANY OTHER ACT, IN FURTHERANCE OF A CORRUPT PAYMENT OR OFFER. THE TERRITORY OF THE UNITED STATES INCLUDES THE FIFTY STATES AND THE DISTRICT OF COLUMBIA. I EXPLAINED EARLIER WHAT IT MEANS TO MAKE USE OF THE MAILS OR ANY MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE. BEAR IN MIND THAT UNLIKE THE "DOMESTIC CONCERN" OBJECT OF THE CONSPIRACY, WHICH REQUIRES THAT THE INDIVIDUAL MADE USE OF THE MAILS OR ANY MEANS OR INSTRUMENTALITY OF INTERSTATE COMMERCE, THIS OBJECT OF THE CONSPIRACY DOES NOT REQUIRE SUCH PROOF. RATHER, IT IS SUFFICIENT THAT THE INDIVIDUAL, WHILE IN THE TERRITORY OF THE UNITED STATES, TOOK

ANY ACT (REGARDLESS OF WHETHER IT INVOLVED THE
MAILS OR ANY MEANS OR INSTRUMENTALITY OF
INTERSTATE COMMERCE) IN FURTHERANCE OF A
CORRUPT OFFER OR PAYMENT.

**FOURTH ELEMENT – OFFER, PROMISE OR PAYMENT
OF ANYTHING OF VALUE**

THE FOURTH ELEMENT IS THAT THE INDIVIDUAL
OFFERED, PAID, PROMISED TO PAY, OR AUTHORIZED THE
PAYMENT OF MONEY OR A GIFT OR ANYTHING OF VALUE,
AS I HAVE ALREADY DEFINED. SUCH OFFER, PAYMENT,
PROMISE OR AUTHORIZATION NEED NOT HAVE
OCCURRED IN THE TERRITORY OF THE UNITED STATES.

FIFTH ELEMENT – FOREIGN OFFICIAL

THE FIFTH ELEMENT IS THAT THE OFFER TO PAY,

PAYMENT, PROMISE TO PAY, OR AUTHORIZATION OF PAYMENT WAS TO A FOREIGN OFFICIAL, OR TO ANY OTHER PERSON OR ENTITY, WHILE THE INDIVIDUAL KNEW THAT ALL OR A PORTION OF THE PAYMENT OR GIFT WOULD BE OFFERED, GIVEN, OR PROMISED, DIRECTLY OR INDIRECTLY, TO A FOREIGN OFFICIAL, AS I HAVE DEFINED PREVIOUSLY.

SIXTH ELEMENT – PURPOSE OF OFFER, PAYMENT, PROMISE OR AUTHORIZATION

THE SIXTH ELEMENT IS THAT THE OFFER TO PAY, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION OF PAYMENT WAS FOR ONE OR MORE OF THE FOUR PURPOSES I OUTLINED PREVIOUSLY.

SEVENTH ELEMENT – OBTAINING OR RETAINING

BUSINESS

THE SEVENTH AND FINAL ELEMENT IS THAT THE OFFER, PROMISE, PAYMENT OR AUTHORIZATION WAS MADE TO ASSIST THE DEFENDANT AND OTHERS IN OBTAINING OR RETAINING BUSINESS FOR OR WITH, OR DIRECTING BUSINESS TO, ANY PERSON OR COMPANY, SUCH AS THE DEFENDANT, VITOL, INC., OR VITOL S.A., AS I HAVE DEFINED EARLIER.

AS I SAID EARLIER, IT IS NOT NECESSARY THAT ANY PERSON OR COMPANY ACTUALLY OBTAINED OR RETAINED ANY BUSINESS WHATSOEVER AS A RESULT OF AN UNLAWFUL OFFER, PAYMENT, OR GIFT, ONLY THAT THE DEFENDANT INTENDED TO ASSIST IN OBTAINING OR

RETAINING BUSINESS FOR OR WITH ANY PERSON OR COMPANY.

I REMIND YOU THAT THE GOVERNMENT NEED NOT PROVE THAT THE DEFENDANT ACTUALLY VIOLATED THE FOREIGN CORRUPT PRACTICES ACT ANTIBRIBERY PROVISIONS UNDER EITHER THE DOMESTIC CONCERN PRONG OR THE TERRITORIAL PRONG, WHICH ARE THE UNLAWFUL ACTS CHARGED AS THE OBJECTS OF THE CONSPIRACY IN COUNT ONE. RATHER, WHAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE PURPOSE OF THE CONSPIRACY WAS TO VIOLATE THE FOREIGN CORRUPT PRACTICES ACT ANTIBRIBERY PROVISIONS AND THAT THE DEFENDANT

KNOWINGLY AND INTENTIONALLY JOINED THAT CONSPIRACY.

SOLICITATION OF BRIBE NOT A DEFENSE
FOR PURPOSES OF THE FOREIGN CORRUPT PRACTICES ACT, IT DOES NOT MATTER WHO FIRST SUGGESTED THAT A CORRUPT OFFER, PAYMENT, PROMISE OR GIFT BE MADE. THE FOREIGN CORRUPT PRACTICES ACT PROHIBITS ANY CORRUPT OFFER OR PAYMENT OR GIFT, IF MADE FOR ONE THE BUSINESS PURPOSES I DESCRIBED, REGARDLESS OF WHO FIRST SUGGESTED IT. IT IS NOT A DEFENSE IF THE OFFER OR PAYMENT OR GIFT WAS FIRST SUGGESTED OR REQUESTED BY SOMEONE OTHER THAN THE DEFENDANT,

**OR DEMANDED ON THE PART OF A FOREIGN OFFICIAL AS
A PRICE FOR DOING BUSINESS OR FOR ANOTHER BENEFIT,
OR THAT THE BUSINESS MAY HAVE BEEN HARMED IF THE
PAYMENT OR GIFT WAS NOT MADE. THAT THE OFFER TO
PAY, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION OF
PAYMENT OR GIFT MAY HAVE BEEN FIRST SUGGESTED BY
SOMEONE ELSE, INCLUDING THE RECIPIENT, IS NOT AN
EXCUSE IF YOU FIND THAT THE DEFENDANT DECIDED TO
OFFER OR MAKE A CORRUPT PAYMENT, NOR DOES IT
ALTER THE CORRUPT PURPOSE WITH WHICH THE OFFER
TO PAY, PAYMENT, PROMISE TO PAY, OR AUTHORIZATION
OF PAYMENT OR GIFT WAS MADE.**

COUNT TWO: VIOLATION OF THE FOREIGN CORRUPT

PRACTICES ACT

COUNT TWO OF THE INDICTMENT CHARGES THE DEFENDANT JAVIER AGUILAR WITH VIOLATING THE FOREIGN CORRUPT PRACTICES ACT UNDER THE DOMESTIC CONCERN PRONG.

COUNT TWO READS:

ON OR ABOUT MAY 18, 2018, WITHIN THE SOUTHERN DISTRICT OF TEXAS, THE DEFENDANT JAVIER AGUILAR, TOGETHER WITH OTHERS, BEING A DOMESTIC CONCERN AND AN EMPLOYEE OF A DOMESTIC CONCERN, DID WILLFULLY MAKE USE OF, AND AID, ABET AND WILLFULLY CAUSE OTHERS TO MAKE USE OF, THE MAILS AND MEANS AND INSTRUMENTALITIES OF INTERSTATE

**COMMERCE CORRUPTLY IN FURTHERANCE OF AN OFFER,
PAYMENT, PROMISE TO PAY AND AUTHORIZATION OF THE
PAYMENT OF ANY MONEY, OFFER, GIFT, PROMISE TO GIVE
AND AUTHORIZATION OF THE GIVING OF ANYTHING OF
VALUE TO A FOREIGN OFFICIAL, TO A FOREIGN
POLITICAL PARTY AND OFFICIAL THEREOF, AND TO A
PERSON WHILE KNOWING THAT ALL OR A PORTION OF
SUCH MONEY AND THING OF VALUE WOULD BE AND HAD
BEEN OFFERED, GIVEN AND PROMISED TO A FOREIGN
OFFICIAL AND TO A FOREIGN POLITICAL PARTY AND
OFFICIAL THEREOF, FOR PURPOSES OF: (I) INFLUENCING
ACTS AND DECISIONS OF SUCH FOREIGN OFFICIAL,
FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF IN**

HIS, HER OR ITS OFFICIAL CAPACITY; (II) INDUCING SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF TO DO AND OMIT TO DO ACTS IN VIOLATION OF THE LAWFUL DUTY OF SUCH OFFICIAL AND PARTY; (III) SECURING ANY IMPROPER ADVANTAGE; AND (IV) INDUCING SUCH FOREIGN OFFICIAL, FOREIGN POLITICAL PARTY AND OFFICIAL THEREOF TO USE HIS, HER OR ITS INFLUENCE WITH A FOREIGN GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES THEREOF TO AFFECT AND INFLUENCE ACTS AND DECISIONS OF SUCH GOVERNMENT AND AGENCIES AND INSTRUMENTALITIES, IN ORDER TO ASSIST AGUILAR, VITOL, [INC.] AND OTHERS IN OBTAINING AND RETAINING BUSINESS FOR AND WITH,

AND DIRECTING BUSINESS TO, VITOL, INC. AND OTHERS,

AS SET FORTH BELOW.

MAY 18, 2018: EMAIL SENT BY AGUILAR, VIA THE FIRST AGUILAR 007 ACCOUNT, FROM WITHIN THE SOUTHERN DISTRICT OF TEXAS, REPLYING TO AN EMAIL SENT BY LIONEL HANST, WRITING TO HANST, IN SPANISH, “THAT’S CORRECT . . . MOVE AHEAD[.] BUT MAKE PAYMENTS FOR NO MORE THAN 150K . . . AND DO THEM EVERY 15 DAYS . . . THEY NEED TO BE PATIENT . . .”

I HAVE ALREADY INSTRUCTED YOU ON THE ELEMENTS OF A VIOLATION OF THE FOREIGN CORRUPT PRACTICES ACT UNDER THE DOMESTIC CONCERN PRONG IN CONNECTION WITH THE OBJECT OF THE CONSPIRACY

CHARGED IN COUNT ONE, AND YOU SHOULD APPLY THOSE INSTRUCTIONS HERE. REMEMBER THAT AS I SAID WITH RESPECT TO COUNT ONE, A CONSPIRACY AND THE SUBSTANTIVE CRIME ARE DISTINCT AND INDEPENDENT OFFENSES. THE PRINCIPAL DIFFERENCE IS THAT COUNT TWO CHARGES THE DEFENDANT WITH HAVING ACTUALLY VIOLATED THE FOREIGN CORRUPT PRACTICES ACT, AS OPPOSED TO AGREEING THAT HE OR A CO-CONSPIRATOR WOULD DO SO.

AIDING AND ABETTING

COUNT TWO OF THE INDICTMENT ALSO CHARGES THE DEFENDANT WITH VIOLATING TITLE 18, UNITED STATES CODE, SECTION 2, THE FEDERAL “AIDING AND ABETTING” STATUTE. THAT IS, IN COUNT TWO, THE DEFENDANT IS CHARGED NOT ONLY AS A PRINCIPAL WHO COMMITTED THE CRIME, BUT ALSO AS AN AIDER AND ABETTOR AND AS A PERSON WHO WILLFULLY CAUSED THE CRIMES. AS A RESULT, UNDER THIS STATUTE, THERE ARE TWO ADDITIONAL WAYS THAT THE GOVERNMENT MAY ESTABLISH THE DEFENDANT’S GUILT OF COUNT TWO. ONE WAY IS CALLED “AIDING AND ABETTING,” AND THE OTHER IS CALLED “WILLFULLY CAUSING A CRIME.” I WILL EXPLAIN EACH OF THESE.

**AIDING AND ABETTING IS DEFINED UNDER FEDERAL
LAW IN TITLE 18, UNITED STATES CODE, SECTION 2,
WHICH PROVIDES THAT:**

**WHOEVER COMMITS AN OFFENSE AGAINST THE
UNITED STATES OR AIDS, ABETS, COUNSELS, COMMANDS,
INDUCES OR PROCURES ITS COMMISSION, IS PUNISHABLE
AS A PRINCIPAL.**

**UNDER THE AIDING AND ABETTING STATUTE, IT IS
NOT NECESSARY FOR THE GOVERNMENT TO SHOW THAT
THE DEFENDANT HIMSELF PHYSICALLY VIOLATED THE
FOREIGN CORRUPT PRACTICES ACT IN ORDER FOR YOU
TO FIND THE DEFENDANT GUILTY. A PERSON WHO AIDS
OR ABETS ANOTHER TO COMMIT AN OFFENSE IS JUST AS**

**GUILTY OF THAT OFFENSE AS IF HE COMMITTED IT
HIMSELF.**

**ACCORDINGLY, YOU MAY FIND THE DEFENDANT
GUILTY OF COUNT TWO IF YOU FIND THAT THE
GOVERNMENT HAS PROVEN BEYOND A REASONABLE
DOUBT THAT ANOTHER PERSON ACTUALLY COMMITTED
THE OFFENSE WITH WHICH THE DEFENDANT IS CHARGED,
AND THAT THE DEFENDANT AIDED, ABETTED,
COUNSELED, COMMANDED, INDUCED OR PROCURED
THAT PERSON IN THE COMMISSION OF THE OFFENSE.**

**THE FIRST REQUIREMENT IS THAT YOU FIND THAT
ANOTHER PERSON HAS COMMITTED THE CRIME
CHARGED. NO ONE CAN BE CONVICTED OF AIDING AND**

**ABETTING THE CRIMINAL ACTS OF ANOTHER IF NO CRIME
WAS COMMITTED BY THE OTHER PERSON IN THE FIRST
PLACE. BUT IF YOU DO FIND THAT A CRIME WAS
COMMITTED, THEN YOU MUST CONSIDER WHETHER THE
DEFENDANT AIDED OR ABETTED THE COMMISSION OF
THAT CRIME.**

**IN ORDER TO AID OR ABET ANOTHER TO COMMIT A
CRIME, IT IS NECESSARY THAT THE DEFENDANT
WILLFULLY AND KNOWINGLY ASSOCIATE HIMSELF IN
SOME WAY WITH THE CRIME, AND THAT HE PARTICIPATE
IN THE CRIME BY DOING SOME ACT TO HELP MAKE THE
CRIME SUCCEED.**

TO ESTABLISH THAT THE DEFENDANT PARTICIPATED

**IN THE COMMISSION OF THE CRIME, THE GOVERNMENT
MUST PROVE THAT DEFENDANT ENGAGED IN SOME
AFFIRMATIVE CONDUCT OR OVERT ACT FOR THE
SPECIFIC PURPOSE OF BRINGING ABOUT THAT CRIME.**

**PARTICIPATION IN A CRIME IS WILLFUL IF DONE
VOLUNTARILY AND INTENTIONALLY, AND WITH THE
SPECIFIC INTENT TO DO SOMETHING WHICH THE LAW
FORBIDS OR WITH THE SPECIFIC INTENT TO FAIL TO DO
SOMETHING THE LAW REQUIRES TO BE DONE; THAT IS TO
SAY, WITH A BAD PURPOSE EITHER TO DISOBEY OR TO
DISREGARD THE LAW.**

**MERELY ASSOCIATING WITH OTHERS WHO WERE
COMMITTING A CRIME IS NOT SUFFICIENT TO ESTABLISH**

AIDING AND ABETTING. ONE WHO HAS NO KNOWLEDGE THAT A CRIME IS BEING COMMITTED OR IS ABOUT TO BE COMMITTED BUT INADVERTENTLY DOES SOMETHING THAT AIDS IN THE COMMISSION OF THAT CRIME IS NOT AN AIDER AND ABETTOR. AN AIDER AND ABETTOR MUST KNOW THAT THE CRIME IS BEING COMMITTED AND ACT IN A WAY WHICH IS INTENDED TO BRING ABOUT THE SUCCESS OF THE CRIMINAL VENTURE.

TO DETERMINE WHETHER A DEFENDANT AIDED OR ABETTED THE COMMISSION OF THE CRIME WITH WHICH HE IS CHARGED, ASK YOURSELF THESE QUESTIONS:

DID HE PARTICIPATE IN THE CRIME CHARGED AS SOMETHING HE WISHED TO BRING ABOUT?

DID HE KNOWINGLY ASSOCIATE HIMSELF WITH THE CRIMINAL VENTURE?

DID HE SEEK BY HIS ACTIONS TO MAKE THE CRIMINAL VENTURE SUCCEED?

IF HE DID, THEN THE DEFENDANT IS AN AIDER AND ABETTOR, AND THEREFORE GUILTY OF THE OFFENSE. IF, ON THE OTHER HAND, YOUR ANSWER TO ANY ONE OF THESE QUESTIONS IS “NO,” THEN THE DEFENDANT IS NOT AN AIDER AND ABETTOR, AND YOU MAY NOT FIND HIM GUILTY AS AN AIDER AND ABETTOR.

ANOTHER WAY OF AIDING AND ABETTING A CRIME IS BY WILLFULLY CAUSING A CRIME. SECTION 2(B) OF THE AIDING AND ABETTING STATUTE READS AS FOLLOWS:

**WHOEVER WILLFULLY CAUSES AN ACT TO BE DONE
WHICH IF DIRECTLY PERFORMED BY HIM OR ANOTHER
WOULD BE AN OFFENSE AGAINST THE UNITED STATES, IS
PUNISHABLE AS A PRINCIPAL.**

**THE TERM “WILLFULLY CAUSED” DOES NOT MEAN
THAT THE DEFENDANT HIMSELF NEED HAVE PHYSICALLY
COMMITTED THE CRIME OR SUPERVISED OR
PARTICIPATED IN THE ACTUAL CRIMINAL CONDUCT
CHARGED IN THE INDICTMENT.**

**TO DETERMINE WHETHER THE DEFENDANT
“WILFULLY CAUSED” THE CRIME, AS YOURSELF THESE
QUESTIONS:**

DID THE DEFENDANT INTEND FOR THE CRIME TO

OCCUR?

**DID THE DEFENDANT INTENTIONALLY CAUSE
ANOTHER PERSON TO COMMIT THE CRIME?

IF YOU ARE PERSUADED BEYOND A REASONABLE
DOUBT THAT THE ANSWER TO BOTH OF THESE
QUESTIONS IS “YES,” THEN THE DEFENDANT IS GUILTY OF
COUNT TWO JUST AS IF HE HIMSELF HAD ACTUALLY
COMMITTED IT. IF, ON THE OTHER HAND, YOUR ANSWER
TO ANY OF THOSE QUESTIONS IS “NO,” THEN YOU MAY
NOT FIND HIM GUILTY AS AN AIDER AND ABETTOR.**

COUNT THREE: MONEY LAUNDERING CONSPIRACY

COUNT THREE OF THE INDICTMENT CHARGES THE DEFENDANT WITH CONSPIRACY TO COMMIT MONEY LAUNDERING AS FOLLOWS:

ON OR ABOUT AND BETWEEN MARCH 1, 2015 AND JULY 10, 2020, BOTH DATES BEING APPROXIMATE AND INCLUSIVE, WITHIN THE EASTERN DISTRICT OF NEW YORK AND ELSEWHERE, THE DEFENDANT JAVIER AGUILAR, TOGETHER WITH OTHERS, DID KNOWINGLY AND INTENTIONALLY CONSPIRE TO COMMIT OFFENSES UNDER TITLE 18, UNITED STATES CODE, SECTION 1956, TO WIT:

(A) TO TRANSPORT, TRANSMIT AND TRANSFER MONETARY INSTRUMENTS AND FUNDS FROM ONE OR

**MORE PLACES IN THE UNITED STATES TO AND THROUGH
ONE OR MORE PLACES OUTSIDE THE UNITED STATES, AND
TO ONE OR MORE PLACES IN THE UNITED STATES FROM
AND THROUGH ONE OR MORE PLACES OUTSIDE THE
UNITED STATES, WITH THE INTENT TO PROMOTE THE
CARRYING ON OF ONE OR MORE SPECIFIED UNLAWFUL
ACTIVITIES, TO WIT: (I) FELONY VIOLATIONS OF THE
FCPA, IN VIOLATION OF TITLE 15, UNITED STATES CODE,
SECTIONS 78DD-2 AND 78DD-3; AND (II) ONE OR MORE
OFFENSES AGAINST A FOREIGN NATION INVOLVING
BRIBERY OF A PUBLIC OFFICIAL, AND THE
MISAPPROPRIATION, THEFT AND EMBEZZLEMENT OF
PUBLIC FUNDS BY AND FOR THE BENEFIT OF A PUBLIC**

OFFICIAL, IN VIOLATION OF THE ECUADORIAN PENAL

CODE, AS DEFINED IN TITLE 18, UNITED STATES CODE,

SECTION 1956(C)(7)(B)(IV) (COLLECTIVELY THE

“SPECIFIED UNLAWFUL ACTIVITIES”), CONTRARY TO

TITLE 18, UNITED STATES CODE, SECTION 1956(A)(2)(A);

AND

(B) TO TRANSPORT, TRANSMIT AND TRANSFER

MONETARY INSTRUMENTS AND FUNDS FROM ONE OR

MORE PLACES IN THE UNITED STATES TO AND THROUGH

ONE OR MORE PLACES OUTSIDE THE UNITED STATES, AND

TO ONE OR MORE PLACES IN THE UNITED STATES FROM

AND THROUGH ONE OR MORE PLACES OUTSIDE THE

UNITED STATES, KNOWING THAT SUCH MONETARY

**INSTRUMENTS AND FUNDS INVOLVED IN THE
TRANSPORTATION, TRANSMISSIONS AND TRANSFERS
REPRESENTED THE PROCEEDS OF SOME FORM OF
UNLAWFUL ACTIVITY, AND KNOWING THAT SUCH
TRANSPORTATION, TRANSMISSIONS AND TRANSFERS
WERE DESIGNED IN WHOLE AND IN PART TO CONCEAL
AND DISGUISE THE NATURE, THE LOCATION, THE SOURCE,
THE OWNERSHIP AND THE CONTROL OF THE PROCEEDS
OF ONE OR MORE OF THE SPECIFIED UNLAWFUL
ACTIVITIES, CONTRARY TO TITLE 18, UNITED STATES
CODE, SECTION 1956(A)(2)(B)(I).**

**ELEMENTS OF CONSPIRACY TO COMMIT MONEY
LAUNDERING**
TO PROVE THE CRIME OF CONSPIRACY TO COMMIT

**MONEY LAUNDERING, THE GOVERNMENT MUST PROVE
TWO ELEMENTS BEYOND A REASONABLE DOUBT:
FIRST, THE EXISTENCE OF THE CONSPIRACY
CHARGED, THAT IS, AN AGREEMENT OR UNDERSTANDING
TO VIOLATE A CERTAIN LAW OF THE UNITED STATES; AND
SECOND, THAT THE DEFENDANT KNOWINGLY AND
WILLFULLY BECAME A MEMBER OF THE CONSPIRACY
CHARGED WITH KNOWLEDGE OF, AND THE INTENT TO
FURTHER, ITS UNLAWFUL OBJECT.**

**I INSTRUCTED YOU REGARDING THESE TWO
ELEMENTS IN MY INSTRUCTIONS FOR COUNT ONE. THOSE
SAME INSTRUCTIONS APPLY HERE. AS YOU HEARD ME SAY
A MOMENT AGO, THERE ARE ONLY TWO ELEMENTS OF**

COUNT THREE. FOR THIS CONSPIRACY COUNT, UNLIKE THE CONSPIRACY CHARGED IN COUNT ONE, YOU NEED NOT FIND THAT AN OVERT ACT WAS COMMITTED BY ANYONE IN FURTHERANCE OF THE CONSPIRACY.

OBJECTS OF THE CHARGED CONSPIRACY TO

COMMIT MONEY LAUNDERING

THE INDICTMENT ALLEGES TWO OBJECTS OF THE CONSPIRACY CHARGED IN COUNT THREE:

(1) TO TRANSPORT, TRANSMIT OR TRANSFER MONEY INTERNATIONALLY WITH AN INTENT TO PROMOTE THE CARRYING ON OF SPECIFIED UNLAWFUL ACTIVITY, IN VIOLATION OF 18 U.S.C. § 1956(A)(2)(A);

AND (2) TO TRANSPORT, TRANSMIT OR TRANSFER MONEY INTERNATIONALLY KNOWING THAT THE MONEY

REPRESENTED PROCEEDS FROM SOME FORM OF UNLAWFUL ACTIVITY AND KNOWING THAT SUCH TRANSPORTATION, TRANSMISSION AND TRANSFER WAS DESIGNED, AT LEAST IN PART, TO CONCEAL AND DISGUISE THE NATURE, LOCATION, SOURCE, OWNERSHIP OR CONTROL OF THE PROCEEDS OF ONE OR MORE SPECIFIED UNLAWFUL ACTIVITIES, IN VIOLATION OF 18 U.S.C. § 1956(A)(2)(B)(I).

THUS, THE CONSPIRACY CHARGED IN COUNT THREE HAS TWO ALLEGED OBJECTIVES, THAT IS, TWO WAYS IN WHICH THE MEMBERS CONSPIRED TO COMMIT MONEY LAUNDERING. IF THE GOVERNMENT FAILS TO PROVE THAT AT LEAST ONE OF THESE TWO OBJECTIVES WAS AN

OBJECT OF THE CONSPIRACY, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY OF COUNT THREE. THE GOVERNMENT NEED NOT PROVE THAT THE DEFENDANT ENTERED INTO AN AGREEMENT TO ACCOMPLISH BOTH THE UNLAWFUL OBJECTIVES ALLEGED. IF YOU FIND UNANIMOUSLY THAT THE DEFENDANT AGREED TO COMMIT EITHER ONE OF THESE OBJECTIVES, THEN THIS ELEMENT WOULD BE PROVED.

THE DEFENDANT IS NOT CHARGED WITH ANY OF THE SUBSTANTIVE MONEY LAUNDERING CRIMES THAT ARE THE OBJECTS OF THE CONSPIRACY. REMEMBER THAT CONSPIRACY, STANDING ALONE, IS A SEPARATE CRIME, EVEN IF THE CONSPIRACY IS NOT SUCCESSFUL AND EVEN

**IF YOU FIND THAT THE DEFENDANT NEVER ACTUALLY
COMMITTED THE SUBSTANTIVE CRIMES THAT WERE THE
OBJECT OF THE CONSPIRACY.**

OBJECTS OF THE MONEY LAUNDERING CONSPIRACY

- ELEMENTS

**I WILL NOW EXPLAIN THE ELEMENTS OF THE TWO
OBJECTS OF THE CONSPIRACY CHARGED IN COUNT
THREE.**

**AS WAS THE CASE FOR COUNT ONE, I WILL DESCRIBE
FOR YOU THE ELEMENTS OF THESE UNLAWFUL ACTS
ONLY SO YOU CAN UNDERSTAND WHAT THE
GOVERNMENT MUST PROVE BEYOND A REASONABLE
DOUBT WAS AN OBJECTIVE OF THE CONSPIRACY.
HOWEVER, YOU MUST ALL AGREE ON THE SPECIFIC**

OBJECT OR OBJECTS THE CONSPIRATORS AGREED TO TRY TO ACCOMPLISH, AND YOU MAY FIND THAT THEY AGREED TO TRY TO ACCOMPLISH MORE THAN ONE. YOU MUST ALL FIND UNANIMOUSLY THAT THE GOVERNMENT HAS PROVEN THE SAME OBJECT OF THE CONSPIRACY BEYOND A REASONABLE DOUBT.

IN CONSIDERING THE TWO OBJECTS OF THE CONSPIRACY CHARGED IN COUNT THREE, YOU SHOULD KEEP IN MIND THAT YOU NEED NOT FIND THAT THE CONSPIRATORS AGREED TO ACCOMPLISH BOTH OBJECTS OR GOALS. INSTEAD, AN AGREEMENT TO ACCOMPLISH EITHER ONE OF THE TWO OBJECTS IS SUFFICIENT.

IF YOU FIND THAT TWO OR MORE PERSONS AGREED

TO ACCOMPLISH EITHER ONE OF THE TWO OBJECTS CHARGED IN COUNT THREE, THE ILLEGAL PURPOSE ELEMENT WILL BE SATISFIED, REGARDLESS OF WHETHER OR NOT THAT OBJECT WAS IN FACT ACCOMPLISHED — THAT IS, REGARDLESS OF WHETHER THAT GOAL SUCCEEDED.

OBJECT #1 - VIOLATION OF THE MONEY LAUNDERING STATUTE - INTERNATIONAL TRANSFER TO PROMOTE SPECIFIED UNLAWFUL ACTIVITY (§ 1956(A)(2)(A))
THE FIRST OBJECT OF THE MONEY LAUNDERING CONSPIRACY CHARGED IN COUNT THREE OF THE INDICTMENT IS THE TRANSPORTATION, TRANSMISSION OR TRANSFER OF FUNDS OR MONETARY INSTRUMENTS TO

**OR FROM THE UNITED STATES, WITH AN INTENT TO
PROMOTE CERTAIN OTHER CRIMES, KNOWN AS
SPECIFIED UNLAWFUL ACTIVITY. THE RELEVANT
STATUTE ON THIS SUBJECT IS TITLE 18, UNITED STATES
CODE, SECTION 1956(A)(2)(A), WHICH READS AS FOLLOWS:**

**WHOEVER TRANSPORTS, TRANSMITS, OR TRANSFERS,
OR ATTEMPTS TO TRANSPORT, TRANSMIT, OR TRANSFER
A MONETARY INSTRUMENT OR FUNDS FROM A PLACE IN
THE UNITED STATES TO OR THROUGH A PLACE OUTSIDE
THE UNITED STATES OR TO A PLACE IN THE UNITED
STATES FROM OR THROUGH A PLACE OUTSIDE THE
UNITED STATES ... WITH THE INTENT TO PROMOTE THE
CARRYING ON OF SPECIFIED UNLAWFUL ACTIVITY**

[SHALL BE GUILTY OF A CRIME].

**THE ELEMENTS OF A VIOLATION OF THIS STATUTE
ARE AS FOLLOWS:**

**FIRST, THAT AN INDIVIDUAL TRANSPORTED OR
TRANSFERRED OR TRANSMITTED, OR ATTEMPTED TO
TRANSPORT OR TRANSFER OR TRANSMIT, A MONETARY
INSTRUMENT OR FUNDS FROM A PLACE IN THE UNITED
STATES TO OR THROUGH A PLACE OUTSIDE THE UNITED
STATES, OR TO A PLACE IN THE UNITED STATES FROM OR
THROUGH A PLACE OUTSIDE THE UNITED STATES.**

**SECOND, THAT THE INDIVIDUAL DID SO WITH THE
INTENT TO PROMOTE THE CARRYING ON OF SPECIFIED
UNLAWFUL ACTIVITY.**

**FIRST ELEMENT – TRANSPORTATION OF A
MONETARY INSTRUMENT OR FUNDS TO OR FROM OR
THROUGH THE UNITED STATES**

**THE FIRST ELEMENT IS THAT AN INDIVIDUAL
TRANSPORTED OR TRANSFERRED OR TRANSMITTED, OR
ATTEMPTED TO TRANSPORT OR TRANSFER OR TRANSMIT,
A MONETARY INSTRUMENT OR FUNDS FROM A PLACE IN
THE UNITED STATES TO OR THROUGH A PLACE OUTSIDE
THE UNITED STATES OR TO A PLACE IN THE UNITED
STATES FROM OR THROUGH A PLACE OUTSIDE THE
UNITED STATES.**

**THE TERM “MONETARY INSTRUMENT” MEANS COIN
OR CURRENCY OF THE UNITED STATES OR OF ANY OTHER
COUNTRY, TRAVELERS’ CHECKS, PERSONAL CHECKS,**

BANK CHECKS, MONEY ORDERS, INVESTMENT SECURITIES IN BEARER FORM OR OTHERWISE IN SUCH FORM THAT TITLE THERETO PASSES UPON DELIVERY, AND NEGOTIABLE INSTRUMENTS IN BEARER FORM OR OTHERWISE IN SUCH FORM THAT TITLE THERETO PASSES UPON DELIVERY. THE TERM "FUNDS" REFERS TO MONEY OR NEGOTIABLE PAPER WHICH CAN BE CONVERTED INTO CURRENCY. FOR THIS OBJECT OF THE CONSPIRACY, IT DOES NOT MATTER WHETHER THE MONETARY INSTRUMENT OR FUNDS AT ISSUE WERE DERIVED FROM CRIMINAL ACTIVITY.

"TRANSPORTED" OR "TRANSFERRED" OR "TRANSMITTED" ARE NOT WORDS THAT REQUIRE A

**DEFINITION; THEY HAVE THEIR ORDINARY, EVERYDAY
MEANING. THE INDIVIDUAL NEED NOT HAVE PHYSICALLY
CARRIED FUNDS OR MONETARY INSTRUMENTS IN ORDER
TO PROVE THAT HE IS RESPONSIBLE FOR TRANSFERRING
OR TRANSPORTING OR TRANSMITTING. ALL THAT IS
REQUIRED IS THAT THE INDIVIDUAL CAUSED THE FUNDS
OR MONETARY INSTRUMENT TO BE TRANSPORTED OR
TRANSFERRED OR TRANSMITTED BY ANOTHER PERSON
OR ENTITY. TO SATISFY THIS ELEMENT, THE FUNDS OR
MONETARY INSTRUMENTS MUST HAVE BEEN
TRANSPORTED, TRANSFERRED OR TRANSMITTED FROM
SOMEWHERE IN THE UNITED STATES TO OR THROUGH
SOMEPLACE OUTSIDE THE UNITED STATES OR TO**

**SOMEPLACE IN THE UNITED STATES FROM OR THROUGH
SOMEPLACE OUTSIDE THE UNITED STATES. THIS
ELEMENT IS SATISFIED WHERE FUNDS OR MONETARY
INSTRUMENTS WERE TRANSPORTED, TRANSFERRED OR
TRANSMITTED INTO OR OUT OF OR THROUGH UNITED
STATES-BASED ACCOUNTS, EVEN WHERE THE UNITED
STATES WAS NOT THE COUNTRY THE FUNDS OR
MONETARY INSTRUMENTS WERE ORIGINALLY COMING
FROM OR ULTIMATELY HEADED TO.**

**SECOND ELEMENT – INTENT TO PROMOTE SPECIFIED
UNLAWFUL ACTIVITY**

**THE SECOND ELEMENT IS THAT THE INDIVIDUAL
ACTED WITH INTENT TO PROMOTE THE CARRYING ON OF
ONE OR MORE CRIMES, REFERRED TO AS A “SPECIFIED**

UNLAWFUL ACTIVITY” OR “SUA.”

**I HAVE ALREADY EXPLAINED WHAT IT MEANS TO
ACT INTENTIONALLY AND YOU SHOULD APPLY THAT
INSTRUCTION HERE.**

**I INSTRUCT YOU, AS A MATTER OF LAW, THAT FOR
THIS OBJECT OF THE CONSPIRACY CHARGED IN COUNT
THREE, THE TERM “SPECIFIED UNLAWFUL ACTIVITY”
INCLUDES: (I) VIOLATIONS OF THE FCPA; AND (II) BRIBERY
OF A PUBLIC OFFICIAL, IN VIOLATION OF ONE OR MORE
OF THE LAWS OF ECUADOR.**

**I WILL EXPLAIN TO YOU THE ELEMENTS OF THE
SPECIFIED UNLAWFUL ACTIVITIES. KEEP IN MIND,
HOWEVER, AS I INSTRUCTED EARLIER WITH RESPECT TO**

THE FOREIGN CORRUPT PRACTICES ACT, THE DEFENDANT DOES NOT NEED TO BE AWARE OF THE SPECIFIC PROVISION OR PROVISIONS OF THE LAW THAT IT WAS THE OBJECT OF THE CONSPIRACY TO VIOLATE, OR ANY OTHER SPECIFIC PROVISION, PROVIDED THAT HE HAD KNOWLEDGE THAT HIS CONDUCT WAS, IN A GENERAL SENSE, UNLAWFUL. YOU NEED NOT FIND THAT THESE ACTIVITIES ACTUALLY OCCURRED, BUT MERELY THAT THE DEFENDANT JOINED THE CONSPIRACY WITH THE OBJECTIVE TO PROMOTE, FACILITATE OR ASSIST THEM TO OCCUR.

FIRST SPECIFIED UNLAWFUL ACTIVITY – FOREIGN
CORRUPT PRACTICES ACT VIOLATIONS WITH RESPECT
TO ECUADOR OR MEXICO

**I HAVE ALREADY EXPLAINED TO YOU THE ELEMENTS
OF THE FIRST SPECIFIED UNLAWFUL ACTIVITY:
VIOLATING THE FOREIGN CORRUPT PRACTICES ACT. IN
DETERMINING WHETHER THERE WAS A MONEY
LAUNDERING CONSPIRACY WITH THE INTENT TO
PROMOTE A VIOLATION OF THE FOREIGN CORRUPT
PRACTICES ACT, I INSTRUCT YOU TO APPLY THE SAME
ELEMENTS OF THE FOREIGN CORRUPT PRACTICES ACT
VIOLATION THAT I DESCRIBED IN CONNECTION WITH THE
CONSPIRACY CHARGE IN COUNT ONE.**

HOWEVER, UNLIKE COUNT ONE, WHICH CONCERNED

**ONLY A CONSPIRACY TO BRIBE ECUADORIAN OFFICIALS,
COUNT THREE ALLEGES A MONEY LAUNDERING
CONSPIRACY TO PROMOTE THE BRIBERY OF
ECUADORIAN OFFICIALS AND TO PROMOTE THE BRIBERY
OF MEXICAN OFFICIALS. THUS, IF YOU FIND BEYOND A
REASONABLE DOUBT THAT THE CONSPIRACY HAD THE
OBJECT EITHER OF PROMOTING A FOREIGN CORRUPT
PRACTICES ACT VIOLATION WITH RESPECT TO
ECUADORIAN OFFICIALS OR PROMOTING A FOREIGN
CORRUPT PRACTICES ACT VIOLATION WITH RESPECT TO
MEXICAN OFFICIALS, THEN YOU SHOULD FIND THAT THIS
ELEMENT IS SATISFIED.**

RECALL THAT I PROVIDED YOU INSTRUCTIONS IN

CONNECTION WITH THE FIFTH ELEMENT OF A FOREIGN CORRUPT PRACTICES ACT VIOLATION ON HOW TO DETERMINE WHETHER CERTAIN ECUADORIAN INDIVIDUALS WERE “FOREIGN OFFICIALS” WITHIN THE MEANING OF THE FOREIGN CORRUPT PRACTICES ACT. AS YOU WILL RECALL, BECAUSE THE PARTIES AGREED THAT THE MINISTRY OF HYDROCARBONS WAS AN “AGENCY” OR “DEPARTMENT” OF THE GOVERNMENT OF ECUADOR AND THAT PETROECUADOR WAS AN “INSTRUMENTALITY” OF THE GOVERNMENT OF ECUADOR, I INSTRUCTED YOU THAT ANY OFFICER OR EMPLOYEE OF THE MINISTRY OF HYDROCARBONS OR PETROECUADOR, OR ANY PERSON ACTING IN AN OFFICIAL CAPACITY FOR OR ON BEHALF OF

THE MINISTRY OF HYDROCARBONS OR PETROECUADOR,
EVEN IF NOT AN OFFICER OR EMPLOYEE OF THE
MINISTRY OF HYDROCARBONS OR PETROECUADOR, WAS
A “FOREIGN OFFICIAL” UNDER THE FOREIGN CORRUPT
PRACTICES ACT.

THE PARTIES ALSO AGREE THAT PETRÓLEOS
MEXICANOS (“PEMEX”) IS AN “INSTRUMENTALITY” OF
THE GOVERNMENT OF MEXICO, BUT THEY DO NOT AGREE
AS TO WHETHER PEMEX PROCUREMENT
INTERNATIONAL, INC. (“PEMEX PROCUREMENT
INTERNATIONAL” OR “PPI”) IS AN “INSTRUMENTALITY”
OF THE GOVERNMENT OF MEXICO. THEREFORE, YOU
WILL NEED TO DECIDE TO WHETHER PPI IS AN

**“INSTRUMENTALITY” OF THE GOVERNMENT OF MEXICO
IN ORDER TO DECIDE WHETHER CERTAIN INDIVIDUALS
WERE “FOREIGN OFFICIALS” UNDER THE FOREIGN
CORRUPT PRACTICES ACT.**

**THAT IS BECAUSE, AS I TOLD YOU PREVIOUSLY, THE
TERM “FOREIGN OFFICIAL” UNDER THE FOREIGN
CORRUPT PRACTICES ACT INCLUDES ANY OFFICER OR
EMPLOYEE OF AN INSTRUMENTALITY OF A FOREIGN
GOVERNMENT AS WELL AS ANY PERSON ACTING IN AN
OFFICIAL CAPACITY FOR OR ON BEHALF OF AN
INSTRUMENTALITY OF A FOREIGN GOVERNMENT, EVEN
IF THAT PERSON IS NOT AN OFFICER OR EMPLOYEE OF
THAT INSTRUMENTALITY.**

AN “INSTRUMENTALITY” OF A FOREIGN GOVERNMENT IS AN ENTITY CONTROLLED BY THE GOVERNMENT OF A FOREIGN COUNTRY THAT PERFORMS A FUNCTION THE GOVERNMENT TREATS AS ITS OWN.

TO DECIDE IF PPI WAS CONTROLLED BY THE MEXICAN GOVERNMENT, YOU MAY CONSIDER THE FOLLOWING FACTORS FOR THE RELEVANT TIME PERIOD:

(1) THE MEXICAN GOVERNMENT’S FORMAL DESIGNATIONS OF THOSE ENTITIES;

(2) WHETHER THE MEXICAN GOVERNMENT HAD A MAJORITY OWNERSHIP INTEREST IN THOSE ENTITIES;

(3) THE GOVERNMENT’S ABILITY TO HIRE AND FIRE THE ENTITY’S PRINCIPALS;

(4) THE EXTENT TO WHICH THE ENTITY'S PROFITS, IF ANY, GO DIRECTLY INTO THE GOVERNMENTAL FISC;

(5) THE EXTENT TO WHICH THE GOVERNMENT FUNDS THE ENTITY IF IT FAILS TO BREAK EVEN;

(6) THE LENGTH OF TIME THESE INDICIA HAVE EXISTED.

TO DECIDE IF PPI PERFORMS A FUNCTION THE GOVERNMENT TREATS AS ITS OWN, YOU MAY CONSIDER THE FOLLOWING FACTORS FOR THE RELEVANT TIME PERIOD:

(1) WHETHER THE ENTITY HAS A MONOPOLY OVER THE FUNCTION IT EXISTS TO CARRY OUT;

(2) WHETHER THE GOVERNMENT SUBSIDIZES THE

COSTS ASSOCIATED WITH THE ENTITY PROVIDING SERVICES;

(3) WHETHER THE ENTITY PROVIDES SERVICES TO THE PUBLIC AT LARGE IN THE FOREIGN COUNTRY;

(4) WHETHER THE PUBLIC AND THE GOVERNMENT OF THE FOREIGN COUNTRY GENERALLY PERCEIVE THE ENTITY TO BE PERFORMING A GOVERNMENTAL FUNCTION.

THESE FACTORS ARE NOT EXCLUSIVE, AND NO SINGLE FACTOR WILL DETERMINE WHETHER PPI WAS AN INSTRUMENTALITY OF THE MEXICAN GOVERNMENT. TO DECIDE WHETHER PPI ARE INSTRUMENTALITIES, YOU MAY CONSIDER ALL OF THE EVIDENCE THAT HAS BEEN

**RECEIVED IN THIS CASE. YOU MAY ALSO CONSIDER THE
FOLLOWING PROVISIONS OF MEXICAN LAW:**

- THE MEXICAN CONSTITUTION MAKES OIL AND
ALL SOLID, LIQUID, AND GASEOUS
HYDROCARBONS THE PROPERTY OF THE
NATION.**
- THE MEXICAN CONSTITUTION REQUIRES THAT
THE EXPLORATION AND EXTRACTION OF OIL
AND OTHER HYDROCARBONS BE CARRIED OUT
WITH THE PURPOSE OF OBTAINING INCOME FOR
THE MEXICAN STATE (I.E., THE MEXICAN
GOVERNMENT) THAT CONTRIBUTES TO THE
LONG-TERM DEVELOPMENT OF THE NATION.**

- **MEXICAN LAW DESIGNATES PEMEX AS A “STATE PRODUCTIVE COMPANY.” THE MEXICAN CONSTITUTION REQUIRES THAT THE MEXICAN GOVERNMENT MAINTAIN OWNERSHIP AND CONTROL OVER STATE PRODUCTIVE COMPANIES.**
- **THE MEXICAN GOVERNMENT IS THE SOLE OWNER OF PEMEX.**
- **MEXICAN LAW PROVIDES THAT PEMEX IS TO BE MANAGED BY A BOARD OF DIRECTORS AND A GENERAL DIRECTOR. THE MEXICAN PRESIDENT HAS THE POWER TO SELECT AND TO REMOVE ALL TEN MEMBERS OF PEMEX’S BOARD OF**

DIRECTORS, IN SOME INSTANCES WITH RATIFICATION BY THE MEXICAN SENATE. THE MEXICAN PRESIDENT ALSO HAS THE POWER TO PINPOINT PEMEX'S GENERAL DIRECTOR AND THE POWER TO REMOVE HIM IN HIS SOLE DISCRETION.

- **MEXICAN LAW PERMITS PEMEX TO ESTABLISH AND OWN COMPANIES CALLED "AFFILIATED COMPANIES" TO CARRY OUT ITS ACTIVITIES. AN AFFILIATED COMPANY IS AT LEAST 50% OWNED BY PEMEX. MEXICAN LAW CLASSIFIES PPI AS AN AFFILIATE COMPANY OF PEMEX.**
- **THE MEXICAN SECRETARY OF ENERGY HAS THE**

**POWER TO DESIGNATE AT LEAST ONE MEMBER
OF THE BOARD OF DIRECTORS OF PEMEX'S
AFFILIATED COMPANIES.**

- **UNDER MEXICAN LAW, AFFILIATED COMPANIES HAVE THE LEGAL NATURE AND ARE ORGANIZED IN ACCORDANCE WITH THE PRIVATE LAW OF THE PLACE OF THEIR INCORPORATION OR CREATION.**
- **EMPLOYEES OF AFFILIATE COMPANIES ARE NOT “PUBLIC SERVANTS” UNDER MEXICO’S PENAL CODE AND THEREFORE ARE NOT SUBJECT TO MEXICO’S CRIMINAL BRIBERY PROVISIONS.**
- **MEXICAN LAW DOES NOT GIVE PPI THE**

**EXCLUSIVE RIGHT TO PROVIDE PROCUREMENT
SERVICES TO PEMEX.**

**IF YOU FIND THAT PPI WAS AN INSTRUMENTALITY OF
THE GOVERNMENT OF MEXICO, THEN YOU MUST FIND
THAT ANY OFFICER OR EMPLOYEE OF PPI, OR ANYONE
ACTING IN AN OFFICIAL CAPACITY FOR OR ON BEHALF OF
PPI, EVEN IF NOT AN OFFICER OR EMPLOYEE, WAS A
“FOREIGN OFFICIAL” UNDER THE FOREIGN CORRUPT
PRACTICES ACT.**

SECOND SPECIFIED UNLAWFUL ACTIVITY –

ECUADORIAN BRIBERY LAW

**AS NOTED ABOVE, THE SECOND SPECIFIED
UNLAWFUL ACTIVITY INVOLVED IN THE MONEY
LAUNDERING CONSPIRACY THE DEFENDANT IS CHARGED**

WITH ARE OFFENSES AGAINST A FOREIGN NATION. THE DEFENDANT IS CHARGED WITH CONSPIRING TO PROMOTE THE BRIBERY OF A PUBLIC OFFICIAL IN VIOLATION OF ECUADORIAN LAW.

I AM NOW GOING TO DESCRIBE THE ECUADORIAN LAW OF BRIBERY, BUT IN CONSIDERING COUNT THREE, YOU NEED NOT FIND THAT THE DEFENDANT INTENDED TO PROMOTE A VIOLATION OF THE ECUADORIAN LAW OF BRIBERY. RATHER, AS I DESCRIBED PREVIOUSLY, IT IS SUFFICIENT IF YOU FIND THAT HE ACTED WITH AN INTENT TO PROMOTE A VIOLATION OF THE FOREIGN CORRUPT PRACTICES ACT IN CONNECTION WITH ECUADOR OR MEXICO BRIBERY, OR A VIOLATION OF THE

ECUADORIAN LAW OF BRIBERY, OR BOTH.

THE CRIME OF BRIBERY UNDER ARTICLE 280 OF THE APPLICABLE ECUADORIAN PENAL CODE HAS FIVE ELEMENTS.

FIRST, THERE MUST BE EITHER ACCEPTANCE OF AN OFFER OR PROMISE OF A BRIBE OR RECEIPT OF A BRIBE BY A PUBLIC SERVANT OR A PERSON WHO ACTS ON BEHALF OF A STATE POWER FROM ANOTHER PERSON. A BRIBE IS DEFINED BROADLY TO INCLUDE A DONATION, GIFT, PROMISE, ADVANTAGE, OR UNDUE ECONOMIC BENEFIT OR OTHER MATERIAL GOOD;

SECOND, THE PERSON TO WHOM THE BRIBE IS OFFERED OR PROMISED MUST BE EITHER A PUBLIC

SERVANT OR A PERSON ACTING ON BEHALF OF A GOVERNMENTAL INSTITUTION. I INSTRUCT YOU AS A MATTER OF LAW THAT EXECUTIVES AND SENIOR MANAGERS OF PETROECUADOR AND OFFICIALS AT THE ECUADORIAN MINISTRY OF HYDROCARBONS ARE PUBLIC SERVANTS FOR PURPOSES OF THIS ELEMENT;

THIRD, THE PUBLIC SERVANT MUST AGREE TO RECEIVE OR ACTUALLY RECEIVE AN IMPROPER ECONOMIC BENEFIT. THE BRIBE NEED NOT BE PAID TO SATISFY THIS ELEMENT. IT IS SUFFICIENT THAT THE PUBLIC SERVANT HAS BEEN PROMISED AND HAS AGREED TO ACCEPT SOMETHING OF VALUE;

FOURTH, THE PURPOSE OF THE PAYMENT MUST BE

**TO INFLUENCE THE WAY IN WHICH THE PUBLIC SERVANT
PERFORMS HIS OR HER JOB OR FUNCTION. BRIBERY
INCLUDES NOT SIMPLY PAYMENTS OR PROMISES OF
PAYMENTS FOR COMMITTING OR FAILING TO COMMIT
ACTS, BUT ALSO EXPEDITING, DELAYING OR
CONDITIONING ANY MATTERS RELATING TO THE PUBLIC
SERVANT'S FUNCTIONS; AND**

**FIFTH, THERE MUST BE CORRUPT CONDUCT; IN
OTHER WORDS, THE BRIBE PAYER MUST HAVE
KNOWLEDGE THAT HE IS PAYING, OFFERING OR
PROMISING NON-OWED RENUMERATION THAT THE
PUBLIC SERVANT CANNOT RIGHTFULLY ACCEPT.**

**OBJECT #2 - VIOLATION OF THE MONEY
LAUNDERING STATUTE - TRANSPORTATION OF
MONETARY INSTRUMENTS OR FUNDS TO CONCEAL OR
DISGUISE PROCEEDS (§ 1956(A)(2)(B)(I))**

**THE SECOND OBJECT OF THE MONEY LAUNDERING
CONSPIRACY CHARGED IN COUNT THREE OF THE
INDICTMENT IS THE KNOWING TRANSPORTATION OF
FUNDS OR MONETARY INSTRUMENTS TO CONCEAL OR
DISGUISE THE ORIGIN OF THE PROPERTY. THE RELEVANT
STATUTE ON THIS SUBJECT IS TITLE 18, UNITED STATES
CODE, SECTION 1956(A)(2)(B)(I), WHICH READS AS
FOLLOWS:**

**WHOEVER TRANSPORTS, TRANSMITS, OR TRANSFERS,
OR ATTEMPTS TO TRANSPORT, TRANSMIT, OR TRANSFER**

**A MONETARY INSTRUMENT OR FUNDS FROM A PLACE IN
THE UNITED STATES TO OR THROUGH A PLACE OUTSIDE
THE UNITED STATES OR TO A PLACE IN THE UNITED
STATES FROM OR THROUGH A PLACE OUTSIDE THE
UNITED STATES ... KNOWING THAT THE MONETARY
INSTRUMENT OR FUNDS INVOLVED IN THE
TRANSPORTATION, TRANSMISSION, OR TRANSFER
REPRESENT THE PROCEEDS OF SOME FORM OF
UNLAWFUL ACTIVITY AND KNOWING THAT SUCH
TRANSPORTATION IS DESIGNED IN WHOLE OR IN PART ...
TO CONCEAL OR DISGUISE THE NATURE, THE LOCATION,
THE SOURCE, THE OWNERSHIP, OR THE CONTROL OF THE
PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY [SHALL BE**

GUILTY OF AN OFFENSE].

**THE ELEMENTS OF A VIOLATION OF THIS STATUTE
ARE AS FOLLOWS:**

**FIRST, THAT THE INDIVIDUAL TRANSPORTED OR
TRANSFERRED OR TRANSMITTED, OR ATTEMPTED TO
TRANSPORT OR TRANSFER OR TRANSMIT, A MONETARY
INSTRUMENT OR FUNDS FROM A PLACE IN THE UNITED
STATES TO OR THROUGH A PLACE OUTSIDE THE UNITED
STATES, OR TO A PLACE IN THE UNITED STATES FROM OR
THROUGH A PLACE OUTSIDE THE UNITED STATES.**

**SECOND, THAT THE INDIVIDUAL DID SO WITH THE
KNOWLEDGE THAT THE MONETARY INSTRUMENT OR
FUNDS INVOLVED REPRESENTED THE PROCEEDS OF SOME**

FORM OF UNLAWFUL ACTIVITY.

THIRD, THAT THE INDIVIDUAL DID SO WITH THE KNOWLEDGE THAT THE TRANSPORTATION, TRANSFER OR TRANSMISSION WAS DESIGNED, IN WHOLE OR IN PART, TO CONCEAL OR DISGUISE THE NATURE, LOCATION, SOURCE, OWNERSHIP OR CONTROL OF THE PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY.

FIRST ELEMENT – TRANSPORTATION OF A MONETARY INSTRUMENT OR FUNDS TO OR FROM OR THROUGH THE UNITED STATES

THE FIRST ELEMENT IS THAT THE INDIVIDUAL TRANSPORTED OR TRANSFERRED OR TRANSMITTED, OR ATTEMPTED TO TRANSPORT OR TRANSFER OR TRANSMIT, A MONETARY INSTRUMENT OR FUNDS FROM A PLACE IN

THE UNITED STATES TO OR THROUGH A PLACE OUTSIDE
THE UNITED STATES OR TO A PLACE IN THE UNITED
STATES FROM OR THROUGH A PLACE OUTSIDE THE
UNITED STATES.

I HAVE PREVIOUSLY DEFINED THIS ELEMENT FOR
YOU IN THE CONTEXT OF THE FIRST CHARGED OBJECT OF
THE MONEY LAUNDERING CONSPIRACY, AND I INSTRUCT
YOU TO APPLY THAT DEFINITION HERE.

SECOND ELEMENT – KNOWLEDGE THAT THE
PROPERTY INVOLVED WAS THE PROCEEDS OF
UNLAWFUL ACTIVITY
THE SECOND ELEMENT IS THAT THE INDIVIDUAL
KNEW THAT THE PROPERTY INVOLVED IN THE
TRANSPORTATION, TRANSMISSION OR TRANSFER WAS

THE PROCEEDS OF SOME FORM OF UNLAWFUL ACTIVITY.

TO SATISFY THIS ELEMENT, THE INDIVIDUAL MUST HAVE KNOWN THAT THE PROPERTY INVOLVED IN THE TRANSACTION REPRESENTED PROCEEDS FROM SOME FORM, THOUGH NOT NECESSARILY WHICH FORM, OF ACTIVITY THAT CONSTITUTES A FELONY UNDER STATE, FEDERAL, OR FOREIGN LAW. I INSTRUCT YOU AS A MATTER OF LAW THAT THE VIOLATIONS OF THE FOREIGN CORRUPT PRACTICES ACT AND THE ECUADORIAN LAW PREVIOUSLY DESCRIBED ARE FELONIES. THE TERM "PROCEEDS" MEANS ANY PROPERTY DERIVED FROM OR OBTAINED OR RETAINED, DIRECTLY OR INDIRECTLY, THROUGH SOME FORM OF UNLAWFUL ACTIVITY,

INCLUDING THE GROSS RECEIPTS OF SUCH ACTIVITY.

THE GOVERNMENT DOES NOT HAVE TO PROVE THAT THE CONSPIRATORS SPECIFICALLY KNEW THAT THE PROPERTY INVOLVED IN THE TRANSPORTATION, TRANSMISSION OR TRANSFER REPRESENTED THE PROCEEDS OF ANY SPECIFIC OFFENSE. NOR DOES THE GOVERNMENT HAVE TO PROVE THAT THE CONSPIRATORS KNEW THE PROPERTY INVOLVED IN THE OFFENSE IN FACT WAS THE PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY, INCLUDING THE VIOLATIONS OF THE FOREIGN CORRUPT PRACTICES ACT AND ECUADORIAN LAW PREVIOUSLY DESCRIBED. RATHER, IF THE GOVERNMENT PROVES THAT THE INDIVIDUALS AGREED TO TRANSPORT,

TRANSMIT OR TRANSFER PROPERTY THEY KNEW TO BE THE PROCEEDS OF SOME ILLEGAL ACTIVITY THAT WAS A FELONY, THIS ELEMENT IS SATISFIED.

KEEP IN MIND THAT IT IS NOT NECESSARY FOR ALL CONSPIRATORS TO BELIEVE THAT THE PROCEEDS CAME FROM THE SAME UNLAWFUL ACTIVITY; IT IS SUFFICIENT THAT EACH POTENTIAL CONSPIRATOR BELIEVED THAT THE PROCEEDS CAME FROM SOME UNLAWFUL ACTIVITY.

THIRD ELEMENT – KNOWLEDGE OF THE UNLAWFUL PURPOSE OF THE TRANSPORTATION

THE THIRD ELEMENT IS THAT THE INDIVIDUAL TRANSPORTED, TRANSFERRED OR TRANSMITTED THE MONETARY INSTRUMENTS OR FUNDS WITH KNOWLEDGE THAT THE TRANSPORTATION, TRANSFER OR

**TRANSMISSION WAS DESIGNED TO CONCEAL OR DISGUISE
THE NATURE, LOCATION, SOURCE, OWNERSHIP, OR
CONTROL OF THE PROCEEDS OF SPECIFIED UNLAWFUL
ACTIVITY.**

**PROOF ONLY THAT THE FUNDS WERE CONCEALED IS
NOT SUFFICIENT TO SATISFY THIS ELEMENT. INSTEAD,
THE PURPOSE OF THE TRANSPORTATION NEEDS TO HAVE
BEEN TO CONCEAL OR DISGUISE THE NATURE, LOCATION,
SOURCE, OWNERSHIP, OR CONTROL OF THE PROCEEDS
AND THAT THE INDIVIDUAL KNEW THAT THIS WAS THE
PURPOSE OF THE TRANSPORTATION.**

ADDITIONAL INSTRUCTION – LAWFULNESS OR
BENEFITS OF ACTS OR GOALS NO DEFENSE
WITH RESPECT TO ALL COUNTS, IT IS NOT A DEFENSE
THAT, HAD THERE BEEN NO OFFER OR GIVING OF A
CORRUPT PAYMENT OR OFFER OF PAYMENT, THE
ALLEGED ECUADORIAN OR MEXICAN OFFICIALS MIGHT
HAVE PERFORMED THE SAME ACT OR ACTS, OR THAT THE
ACTIONS TAKEN BY THE ALLEGED ECUADORIAN OR
MEXICAN OFFICIALS OR THE ACTS THAT THE DEFENDANT
INTENDED TO BE TAKEN BY THEM MAY HAVE BEEN
DESIRABLE OR BENEFICIAL TO THE PUBLIC OR TO ANY
PARTICULAR COUNTRY, OR WOULD NOT HAVE HARMED
THE PUBLIC, OR ANY PARTICULAR COUNTRY. NOR IS IT A
DEFENSE THAT THE ACTIONS TAKEN BY THE ALLEGED

**ECUADORIAN AND MEXICAN OFFICIALS AS A RESULT IN
WHOLE OR IN PART OF THE ALLEGED BRIBES MAY HAVE
BEEN ONLY THE FIRST STEP IN AN OTHERWISE LAWFUL
OR PROPER PROCESS. THE LAWS IN THIS CASE ARE NOT
CONCERNED WITH THE RESULTS OF AN OFFER OR GIVING
OF CORRUPT PAYMENTS, BUT RATHER THAT SUCH
OFFERS AND PAYMENTS NOT BE MADE.**

MULTIPLE CONSPIRACIES

AS I MENTIONED, COUNT ONE OF THE INDICTMENT CHARGES A SINGLE CONSPIRACY TO VIOLATE THE FOREIGN CORRUPT PRACTICES ACT, AND COUNT THREE CHARGES A SINGLE CONSPIRACY TO COMMIT MONEY LAUNDERING.

AS TO COUNT ONE, WHETHER THERE EXISTED A SINGLE UNLAWFUL AGREEMENT, OR MANY SUCH AGREEMENTS, OR INDEED, NO AGREEMENT AT ALL, IS A QUESTION OF FACT FOR YOU, THE JURY, TO DETERMINE.

LIKEWISE, AS TO COUNT THREE, WHETHER THERE EXISTED A SINGLE UNLAWFUL AGREEMENT, OR MANY SUCH AGREEMENTS, OR NO AGREEMENT AT ALL, IS A QUESTION OF FACT FOR YOU, THE JURY, TO DETERMINE.

WHEN TWO OR MORE PEOPLE JOIN TOGETHER TO FURTHER ONE COMMON UNLAWFUL DESIGN OR PURPOSE, A SINGLE CONSPIRACY EXISTS. BY WAY OF CONTRAST, MULTIPLE CONSPIRACIES EXIST WHEN THERE ARE SEPARATE UNLAWFUL AGREEMENTS TO ACHIEVE DISTINCT PURPOSES.

YOU MAY FIND THAT THERE WAS A SINGLE CONSPIRACY DESPITE THE FACT THAT THERE WERE CHANGES IN EITHER PERSONNEL, BY THE TERMINATION, WITHDRAWAL, ADDITIONS OF NEW MEMBERS, OR ACTIVITIES, OR BOTH, SO LONG AS YOU FIND THAT SOME OF THE CO-CONSPIRATORS CONTINUED TO ACT FOR THE ENTIRE DURATION OF THE CONSPIRACY FOR THE

**PURPOSES CHARGED IN THE INDICTMENT. THE FACT
THAT THE MEMBERS OF A CONSPIRACY ARE NOT ALWAYS
IDENTICAL DOES NOT NECESSARILY IMPLY THAT
SEPARATE CONSPIRACIES EXIST.**

**ON THE OTHER HAND, IF YOU FIND THAT THE
CONSPIRACY CHARGED IN COUNT ONE DID NOT EXIST, OR
THAT THE DEFENDANT WAS A MEMBER OF ANOTHER
CONSPIRACY, AND NOT THE ONE CHARGED IN COUNT
ONE, THEN YOU CANNOT FIND THE DEFENDANT GUILTY
OF THE SINGLE CONSPIRACY CHARGED IN THAT COUNT.
THIS IS SO EVEN IF YOU FIND THAT SOME CONSPIRACY
OTHER THAN THE ONE CHARGED IN COUNT ONE EXISTED,
EVEN THOUGH THE PURPOSES OF BOTH CONSPIRACIES**

MAY HAVE BEEN THE SAME AND EVEN THOUGH THERE

MAY HAVE BEEN SOME OVERLAP IN MEMBERSHIP.

LIKEWISE, IF YOU FIND THAT THE CONSPIRACY

CHARGED IN COUNT THREE DID NOT EXIST, OR THAT THE

DEFENDANT WAS A MEMBER OF ANOTHER CONSPIRACY,

AND NOT THE ONE CHARGED IN COUNT THREE, THEN YOU

CANNOT FIND THE DEFENDANT GUILTY OF THE SINGLE

CONSPIRACY CHARGED IN THAT COUNT. THIS IS SO EVEN

IF YOU FIND THAT SOME CONSPIRACY OTHER THAN THE

ONE CHARGED IN COUNT THREE EXISTED, EVEN THOUGH

THE PURPOSES OF BOTH CONSPIRACIES MAY HAVE BEEN

THE SAME AND EVEN THOUGH THERE MAY HAVE BEEN

SOME OVERLAP IN MEMBERSHIP.

THEORY OF DEFENSE

**MR. AGUILAR HAS PLED NOT GUILTY AND MAINTAINS
THAT HE DID NOT COMMIT THE OFFENSES CHARGED.**

III. RULES GOVERNING JURY DELIBERATIONS

INTRODUCTION TO DELIBERATIONS

**YOU ARE ABOUT TO GO INTO THE JURY ROOM,
MEMBERS OF THE JURY, TO BEGIN YOUR DELIBERATIONS.
THAT BRINGS US TO THE THIRD AND FINAL PART OF MY
CHARGE WHICH PROVIDES SOME GENERAL RULES
REGARDING YOUR DELIBERATIONS.**

SELECTING A FOREPERSON

IN ORDER THAT YOUR DELIBERATIONS MAY

PROCEED IN AN ORDERLY FASHION, FIRST YOU SHOULD

HAVE A FOREPERSON. TRADITIONALLY, JUROR NUMBER

ONE ACTS AS FOREPERSON. OF COURSE, HIS OR HER VOTE

IS ENTITLED TO NO GREATER WEIGHT THAN THAT OF ANY

OTHER JUROR.

DELIBERATIONS

KEEP IN MIND THAT NOTHING I HAVE SAID IN THESE INSTRUCTIONS IS INTENDED TO SUGGEST TO YOU IN ANY WAY WHAT I THINK YOUR VERDICT SHOULD BE. THAT IS ENTIRELY FOR YOU TO DECIDE.

BY WAY OF REMINDER, I CHARGE YOU ONCE AGAIN THAT IT IS YOUR RESPONSIBILITY TO JUDGE THE FACTS IN THIS CASE FROM THE EVIDENCE PRESENTED DURING THE TRIAL AND TO APPLY THE LAW, AS I HAVE GIVEN IT TO YOU, TO THE FACTS AS YOU FIND THEM FROM THE EVIDENCE.

WHEN YOU RETIRE, IT IS YOUR DUTY TO DISCUSS THE CASE FOR THE PURPOSE OF REACHING AGREEMENT IF YOU CAN DO SO. EACH OF YOU MUST DECIDE THE CASE

**FOR YOURSELF BUT SHOULD DO SO ONLY AFTER
CONSIDERING ALL THE EVIDENCE, LISTENING TO THE
VIEWS OF YOUR FELLOW JURORS, AND DISCUSSING IT
FULLY. IT IS IMPORTANT THAT YOU REACH A VERDICT IF
YOU CAN DO SO CONSCIENTIOUSLY. YOU SHOULD NOT
HESITATE TO RECONSIDER YOUR OPINIONS FROM TIME
TO TIME AND TO CHANGE THEM IF YOU ARE CONVINCED
THAT THEY ARE WRONG. HOWEVER, DO NOT SURRENDER
AN HONEST CONVICTION AS TO WEIGHT AND EFFECT OF
THE EVIDENCE SIMPLY TO ARRIVE AT A VERDICT.**

UNANIMOUS VERDICT

ANY VERDICT YOU REACH MUST BE UNANIMOUS.

THAT IS, WITH RESPECT TO EACH COUNT, YOU MUST ALL

AGREE AS TO WHETHER YOUR VERDICT IS GUILTY OR

NOT GUILTY AS TO THAT COUNT.

TIME AND PLACE OF DELIBERATIONS

DELIBERATIONS ARE TO TAKE PLACE ONLY IN THE JURY ROOM. YOU WILL NOT DISCUSS THIS CASE WITH ANYONE OUTSIDE THE JURY ROOM. AND THAT INCLUDES YOUR FELLOW JURORS. YOU WILL ONLY DISCUSS THE CASE WHEN ALL 12 DELIBERATING JURORS ARE TOGETHER, IN THE JURY ROOM, WITH NO ONE ELSE PRESENT, BEHIND THE CLOSED DOOR. AT NO OTHER TIME IS THERE TO BE ANY DISCUSSION ABOUT THE MERITS OF THE CASE. PERIOD.

NO CONSIDERATION OF PUNISHMENT

**FINALLY, YOU CANNOT ALLOW A CONSIDERATION OF
THE PUNISHMENT WHICH MAY BE IMPOSED UPON THE
DEFENDANT, IF CONVICTED, TO INFLUENCE YOUR
VERDICT IN ANY WAY OR TO ENTER INTO YOUR
DELIBERATIONS.**

**I INSTRUCT YOU, HOWEVER, THAT NONE OF THE
COUNTS IN THIS CASE IS A CAPITAL COUNT. BY THAT I
MEAN THAT THE DEATH PENALTY IS NOT A POSSIBLE
PUNISHMENT FOR ANY OF THE COUNTS IN THIS CASE.**

**REGARDLESS, THE DUTY OF IMPOSING A SENTENCE
RESTS EXCLUSIVELY WITH ME. YOUR DUTY IS TO WEIGH
THE EVIDENCE IN THE CASE AND TO DETERMINE
WHETHER THE GOVERNMENT HAS PROVEN EVERY**

**ELEMENT BEYOND A REASONABLE DOUBT SOLELY UPON
SUCH EVIDENCE AND UPON THE LAW WITHOUT BEING
INFLUENCED BY ANY ASSUMPTION, CONJECTURE,
SYMPATHY, OR INFERENCE NOT WARRANTED BY THE
FACTS.**

NO COMMUNICATIONS RULE

**AS I AM SURE YOU CAN IMAGINE, IT IS VERY
IMPORTANT THAT YOU NOT COMMUNICATE WITH
ANYONE OUTSIDE THE JURY ROOM ABOUT YOUR
DELIBERATIONS OR ABOUT ANYTHING TOUCHING THIS
CASE. THERE IS ONLY ONE EXCEPTION TO THIS RULE. IF
IT BECOMES NECESSARY DURING YOUR DELIBERATIONS
TO COMMUNICATE WITH ME, YOU MAY SEND A NOTE,
THROUGH THE MARSHAL, SIGNED BY YOUR FOREPERSON
OR BY ONE OR MORE MEMBERS OF THE JURY. NO
MEMBER OF THE JURY SHOULD EVER ATTEMPT TO
COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING,
AND I WILL NEVER COMMUNICATE WITH ANY MEMBER
OF THE JURY ON ANY SUBJECT TOUCHING THE MERITS OF**

**THE CASE OTHER THAN IN WRITING, OR ORALLY HERE IN
OPEN COURT. IF YOU SEND ANY NOTES TO THE COURT, DO
NOT DISCLOSE ANYTHING ABOUT YOUR DELIBERATIONS.
SPECIFICALLY, DO NOT DISCLOSE TO ANYONE — NOT
EVEN TO ME — HOW THE JURY STANDS, NUMERICALLY OR
OTHERWISE, UNTIL AFTER YOU HAVE REACHED A
UNANIMOUS VERDICT ON EACH COUNT OR HAVE BEEN
DISCHARGED.**

JURY RECOLLECTION AND JURY NOTES

KEEP IN MIND TOO THAT IN DELIBERATIONS, THE JURY'S RECOLLECTION GOVERNS, NOBODY ELSE'S. NOT THE COURT'S—IF I HAVE MADE REFERENCE TO THE TESTIMONY—AND NOT COUNSEL'S RECOLLECTION. IT IS YOUR RECOLLECTION THAT MUST GOVERN DURING YOUR DELIBERATIONS. IF NECESSARY DURING THOSE DELIBERATIONS, YOU MAY REQUEST BY JURY NOTE A READING FROM THE TRIAL TRANSCRIPT THAT MAY REFRESH YOUR RECOLLECTION.

PLEASE, AS BEST YOU CAN, TRY TO BE AS SPECIFIC AS POSSIBLE IN YOUR REQUESTS FOR READ BACKS; IN OTHER WORDS, IF YOU ARE INTERESTED ONLY IN A PARTICULAR PART OF A WITNESS'S TESTIMONY, PLEASE INDICATE

THAT TO US. IT MAY TAKE SOME TIME FOR US TO LOCATE THE TESTIMONY IN THE TRANSCRIPTS, SO PLEASE BE PATIENT. AND, AS A GENERAL MATTER, IF THERE IS EVER A DELAY IN RESPONDING TO A JURY NOTE, PLEASE UNDERSTAND THERE IS A REASON FOR IT. NONE OF US GOES ANYWHERE. AS SOON AS A JURY NOTE IS DELIVERED TO THE COURT BY THE MARSHAL, WE TURN OUR ATTENTION TO IT IMMEDIATELY.

IN THE SAME WAY, IF YOU HAVE ANY QUESTIONS ABOUT THE APPLICABLE LAW OR YOU WANT A FURTHER EXPLANATION FROM ME, SEND ME A NOTE. WE WILL PROVIDE A RESPONSE AS SOON AS WE CAN.

COMPLETION OF VERDICT SHEET

**I HAVE PROVIDED THE JURY WITH A VERDICT SHEET,
WHICH IS SELF-EXPLANATORY. NEEDLESS TO SAY,
HOWEVER, IF YOU HAVE ANY QUESTIONS ABOUT THE
VERDICT SHEET, DO NOT HESITATE TO SEND THE COURT
A NOTE ASKING FOR FURTHER INSTRUCTIONS.**

**WITH RESPECT TO EACH COUNT, YOU ARE TO
RESOLVE INDIVIDUALLY THE ISSUE OF WHETHER THE
GOVERNMENT HAS ESTABLISHED BEYOND A
REASONABLE DOUBT THE ESSENTIAL ELEMENTS OF THE
OFFENSE AS I HAVE DESCRIBED THEM TO YOU. THAT IS,
YOU MUST ALL AGREE UNANIMOUSLY AS TO WHETHER
YOUR VERDICT IS GUILTY OR NOT GUILTY.**

**WHEN YOU HAVE REACHED A DECISION, HAVE THE
FOREPERSON RECORD THE ANSWERS, SIGN THE VERDICT
FORM, AND PUT THE DATE ON IT—AND NOTIFY THE
MARSHAL BY NOTE THAT YOU HAVE REACHED A
VERDICT. BRING THE COMPLETED VERDICT SHEET WITH
YOU WHEN SUMMONED BY THE COURT.**

BIAS

**KEEP IN MIND THAT YOU MUST NOT BE INFLUENCED
BY SYMPATHY, PREJUDICE, OR PUBLIC OPINION. I
REMIND YOU AT THE OUTSET THAT EACH OF YOU HAS
UNDERTAKEN A SOLEMN OBLIGATION, A SWORN
OBLIGATION, TO DECIDE THIS CASE SOLELY ON THE
EVIDENCE. YOU MUST CAREFULLY AND IMPARTIALLY
CONSIDER THE EVIDENCE, FOLLOW THE LAW AS I STATE
IT, AND REACH A JUST VERDICT, REGARDLESS OF THE
CONSEQUENCES.**

JUROR'S OATH OF DUTY

**AS YOU BEGIN YOUR DELIBERATIONS, REMEMBER
YOUR OATH SUMS UP YOUR DUTY, AND THAT IS: WITHOUT
FEAR OR FAVOR TO ANY PERSON OR PARTY, YOU WILL
WELL AND TRULY TRY THE ISSUES IN THIS CASE
ACCORDING TO THE EVIDENCE GIVEN TO YOU IN COURT
AND THE LAWS OF THE UNITED STATES.**

DISMISSAL OF ALTERNATE JURORS

IN A FEW MINUTES, I AM GOING TO EXCUSE OUR ALTERNATE JURORS. AS I TOLD YOU BEFORE, YOUR SERVICES WERE REQUIRED AS A SAFEGUARD AGAINST THE POSSIBILITY THAT ONE OF THE REGULAR JURORS MIGHT BE UNABLE TO COMPLETE HIS OR HER SERVICE. I COMMEND THE ALTERNATE JURORS FOR THEIR FAITHFUL ATTENDANCE AND ATTENTION. ON BEHALF OF THE COURT AND THE PARTIES, I THANK YOU FOR YOUR SERVICE.

PAUSE FOR EXCEPTIONS TO CHARGE

**MEMBERS OF THE JURY, I ASK YOUR PATIENCE FOR A
FEW MOMENTS LONGER. IT MAY BE NECESSARY FOR ME
TO SPEND A FEW MOMENTS WITH COUNSEL AND THE
REPORTER AT THE SIDE BAR. IF SO, I WILL ASK YOU TO
REMAIN PATIENTLY IN THE BOX, WITHOUT SPEAKING TO
EACH OTHER, AND WE WILL RETURN IN JUST A MOMENT
TO SUBMIT THE CASE TO YOU.**

**THANK YOU AGAIN FOR YOUR TIME AND
ATTENTIVENESS.**